147 U.S. 190

RECORD, CASE No. 13,585.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 381. 56

THE ILLINOIS CENTRAL RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE CITY OF DECATUR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

FILED JULY 22, 1889.

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a UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

The President of the United States of America to the chief justice and associate justices of the supreme court of the State of Illinois, central grand division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment which is in said supreme court of said State, before you or some of you, being the highest court of law or equity of said State in which a decision could be had in the said suit between the Illinois Central Railroad Company and the City of Decatur, wherein was drawn in question the validity of a statute of and an authority exercised under the said State on the ground of their being repugnant to the Constitution of the United States and the decision was in favor of their validity, a manifest error hath happened, to the great damage of the said Illinois Central Railroad Company, as by its complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy
b justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October next, A. D. 1889, in the said Supreme Court to be then and there held, that, the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, the second Monday of October, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States the one hundred and thirteenth year.

{ The Seal of the Circuit Court of the United States for the South. Dist. Ill. }

JAMES T. JONES,
Clerk of the United States Circuit Court,
So. Dist. of Illinois.

c [Endorsed:] Writ of error. Illinois Central Railroad Company, plaintiff, *vs.* City of Decatur, defendant. Received the within writ Nov. 2, 1888. E. A. Snively, clerk.

In obedience to this writ of error I herewith transmit a full, true, and correct copy of the convening order of the supreme court for the January, A. D. 1888, term, together with a full, true, and correct copy of the record from the county court of Macon county and a copy of the opinion of the supreme court and all the orders made by said supreme court in a certain cause lately determined in

said supreme court between the Illinois Central Railway Co. and the City of Decatur.

E. A. SNIVELY,
Clerk Supreme Court.

d UNITED STATES OF AMERICA, } *ss:*
Southern District of Illinois, }

To the City of Decatur, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, A. D. 1889, pursuant to a writ of error issued by the Supreme Court of the United States and directed to the supreme court of the State of Illinois for the review of the judgment rendered September 27, A. D. 1888, in the cause therein pending wherein The Illinois Central Railroad Company was appellant and the said City of Decatur was appellee, which writ of error has been filed in the clerk's office of the supreme court of the State of Illinois, and in which writ The Illinois Central Railroad Company is named as plaintiff and the said City of Decatur is named as defendant, to show cause, if any there be, why the judgment mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. A. M. Craig, C. J., this 3d day of November, in the year of our Lord one thousand eight hundred and eighty-eight.

A. M. CRAIG,
Chief Justice.

e [Endorsed:] Citation. Illinois Central Railroad Company, plaintiff in error, *vs.* City of Decatur, defendant in error. In the Supreme Court of the United States.

I hereby acknowledge service of the within citation by copy this 8th day of November, A. D. 1888.

M. F. KANAN,
Mayor of the City of Decatur.

I hereby acknowledge service of the within citation by copy this 8th day of November, A. D. 1888.

I. R. MILLS,
City Attorney of the City of Decatur.

1 STATE of ILLINOIS, *ss:*

Supreme Court, Central Grand Division.

At a supreme court begun and held at Springfield on the first Tuesday in the month of June, in the year of our Lord one thousand eight hundred and eighty-eight, the same being the fifth day of said month, in the year of our Lord one thousand eight hundred and eighty-eight.

Present: Alfred M. Craig, chief justice; John M. Scott, justice;

Simeon P. Shope, justice; John Scholfield, justice; Benjamin D. Magruder, justice; George Hunt, attorney general; John S. Condell, Jr., sheriff; E. A. Snively, clerk.

Be it remembered that afterwards, to wit, on the sixth day of June, A. D. 1888, there was filed in said court a record, which is in words and figures as follows, to wit:

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss:
Macon County, }

In County Court, February Term, A. D. 1888.

Pleas before the Honorable William E. Nelson, county judge of the county of Macon, in the State of Illinois, and presiding judge of the county court in and for the said Macon county, in the State aforesaid, and at a term thereof begun and held at
2 the court-house, in the city of Decatur, in said county, on the second Monday (being the 13th day) of February, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the said United States the one hundred and twelfth.

Present: Hon. William E. Nelson, judge of the county court; G. P. Hardy, clerk; E. P. Vail, State's attorney; J. H. Manzy, sheriff.
Attest: G. P. HARDY, *Clerk.*

In the Matter of the Petition of THE CITY OF DECATUR for the Levy of Special Taxes for the Paving of East Wood Street. No. 556.

The Petition.

STATE OF ILLINOIS, } ss:
County of Macon, }

In the County Court, to the October Term, A. D. 1887.

To the Honorable W. E. Nelson, judge of said court:

Your petitioner, The City of Decatur, a municipal corporation organized and existing under the laws of the State of Illinois, by Isaac R. Mills, its attorney, respectfully represents unto your honor that the city council of said city of Decatur on the 8th day of June, 1887, passed a certain ordinance providing for a certain local improvement, to wit, the paving of East Wood street from Broadway street to Webster street, in said city, by said ordinance specified and described, and by said ordinance provided that the whole of
3 the cost of said improvement should be paid by special taxation upon property abutting upon and contiguous thereto not included in the crossings and intersections of streets and alleys, the costs of which should be paid by general taxation, which said ordinance was afterwards, to wit, on the 8th day of June, 1887, duly approved by the mayor of said city of Decatur, a certified copy of

which said ordinance and the approval thereof by the mayor is here*by* attached and made a part hereof and marked Exhibit "A."

Your petitioner further represents that the said city council of said city in and by said ordinance aforesaid appointed three competent persons, to wit, John G. Cloyd, Jas. S. Carter, and O. B. Gorin, to make an estimate of the cost of said improvement contemplated by said ordinance, including labor, materials, and all other expenses attending the same, and the cost of levying, making, and collecting said special taxes, and the said commissioners did, on the 20th day of June, 1887, make a written report of said estimate to the city council of said city, which said report was by said city council, on the said 20th day of June, 1887, duly received and approved, a true copy of which said repert is hereto annexed and made a part hereof and marked Exhibit "B."

Your petitioner would therefore pray that commissioners be appointed and the cost of said improvement provided for by said ordinance be levied and assessed in the manner provided by said ordinance and the law in such case made and provided.

THE CITY OF DECATUR, *Petitioner*,
By I. R. MILLS, *City Attorney*.

"EXHIBIT A."

An ordinance providing for the paving of East Wood street from the east line of South Broadway to the east line of Webster street."

4 Be it ordained by the city council of the city of Decatur:

SECTION 1. That East Wood street in the city of Decatur from the east line of South Broadway street east to the east line of Webster street to the width of forty feet, twenty feet on each side of the central line thereof shall be improved by grading, graveling, guttering and paving with brick.

SECTION 2. That said grading, gravelling, guttering and paving of said Wood street as provided in the foregoing section, and more particularly hereinafter set forth, is hereby declared to be a local improvement, the cost thereof to be paid for by the special taxation of the lots, parts of lots and parcels of land abutting upon said street on both sides thereof along the line of said improvement.

SECTION 3. That said grading, graveling, guttering and paving shall be made and done according to the following plans and specifications: Said East Wood street from the east line of Broadway street to the east line of Webster street for the distance of twenty feet on each side of the central line thereof shall be excavated to the depth of twelve (12) inches along the central line thereof below the established grade thereof, and at the outer edges of said street where the same is so excavated on either side thereof at a distance of eighteen inches toward the center of said street respectively, to the dept of twenty-two inches, the said excavation of said street to be in the form of a segment of a circle, the portion of said street between said eighteen-inch lines aforesaid and the outer edges of said street so excavated on both sides thereof shall be so graded and paved in a

similar manner as the balance of said street so as to make a
5 good and substantial gutter along said eighteen-inch lines; that when said street shall have been so excavated there shall be placed thereon a bed of sand and gravel four (4) inches in depth, said sand and gravel to be well tamped, so as to form a smooth and compact surface; that on said bed of sand and gravel so tamped and made smooth shall be laid on their flat surface a close floor of extra hard burned, sound and shapely paving brick, said brick to be laid longitudinally with the street and the joints broken in each course, said bricks to be put closely together so as to form a smooth and solid floor; that over said floor of brick so laid there shall be placed a layer of screened sand one (1) inch in thickness so as to fill all crevices and make smooth so as to form an even floor for the subsequent layer of brick; that upon said layer of sand so made smooth there shall be placed and laid on their edges in close contact with each other a layer of extra hard-burned paving brick, said brick to be laid at right angles with the line of said street joints, to be broken in each alternate course, all brick being sound, nothing less than a half brick to be used; that after said bricks are so laid a thin layer of screened dry sand shall be swept over said pavement so as to fill all crevices therein and said pavement shall be thoroughly tamped or rolled with a heavy roller, after which a top dressing of clean screened sand not less than one (1) inch in depth shall be placed over the entire surface of said improvement. There shall be two cross-walks at the intersection of each street, one on each side, so as to connect with the sidewalks of the width of six (6) feet to be formed by an oval elevation across said street, so that the center of each
6 cross-walk will be four inches below the grade of the sidewalk with which they connect and slope to meet the grade of the street and to extend to a point within four feet (4) of the outer edges of said improvement so that aprons may be placed over the gutters.

SECTION 4. The following-named persons to wit: J. S. Carter, J. G. Cloyd and O. B. Gorin are hereby appointed a committee to make a separate estimate of the cost of paving said street mentioned in section one (1) of this ordinance, excepting so much thereof as is included in the street and alley intersections and crossings of the same of the cost of labor, materials, and all other expenses attending the same, including the grading, gravelling, guttering and paving and the cost of levying and collecting the special taxes hereinafter ordered; also a separate estimate of the cost, including labor, materials and all other expenses attending the same of paving the said streets and alley intersections and crossings, and the said J. S. Carter, J. G. Cloyd and O. B. Gorin shall report in writing to the city council, showing the costs and expenses aforesaid at the next regular meeting of that body, or as soon thereafter as may be.

SECTION 5. The cost and expenses of making said improvement to the amount of paving the street and alley intersections and crossings embraced therein shall be included in the annual appropriation bill or ordinance and levied and collected with and as a part of the general taxes of the city for the next current fiscal year.

SECTION 6. The remainder of the cost of said improvement shall be paid for by special taxation, and for that purpose a special tax equal in amount to the whole cost of paving said street not
7 included in the intersections and crossings aforesaid and the cost of all labor and materials required therefor and all other expenses connected with the same, including the cost of levying assessing and collecting said special tax is hereby ordered to be levied, assessed and collected upon and from each of said lots parts of lots and parcels of land in proportion to the frontage thereof upon the said street along the line of said improvement so ordered to be made.

SECTION 7. Upon the filing of the report of the said J. S. Carter, J. G. Cloyd and O. B. Gorin, as hereinbefore required and the approval thereof by the city council, the city attorney is hereby required to file the proper petition in the county court of Macon county for proceedings to assess that portion of the cost of said improvement required to be raised by special taxation according to the provisions of the statute in such case made and provided.

SECTION 8. The said grading, graveling, guttering and paving of said street along the line of said improvement as herein provided, the labor and materials required to do and make the same, shall be let by contract in parcels or altogether as the city council may determine upon the final inspection of the bids. The city clerk shall advertise in some one or more of the city papers having a general circulation that the contract for the making of said improvement, including the labor and materials will be let to the lowest responsible bidder and shall state in said advertisement that sealed bids will be received for a period of thirty (30) days after the date of the publication of said notice for the materials, for the labor and for the entire improvement, including the materials and labor. When said bids shall have been received, said clerk shall submit the same to the city council which shall determine the lowest
8 responsible bid and let the contract which shall be reduced to writing, to the lowest responsible bidder. Provided that said council shall have the right to reject any and all bids.

SECTION 9. Such contract shall be signed by the mayor and countersigned by the city clerk; said contract shall contain among other things a covenant in substance to the effect that the contractor or contractors shall be paid from said special tax and that they, the said contractor or contractors, shall have no lien upon the city in any event over and above the amount hereinbefore provided to be raised for said improvement by general taxation, except from the collection of the special taxes ordered to be levied and assessed by the city council for the work so contracted.

SECTION 10. The city council shall have the right to reserve for said city all or any portion of the dirt that may be necessary to be removed from the street on account of the excavations thereof, the dirt to be placed on wagons furnished by the city by the contractor or contractors; provided the street superintendent may require the contractor or contractors to place such dirt or any part thereof upon

adjacent boulevards at any place within two hundred (200) feet of the place of excavation.

SECTION 11. The making of the improvement shall be under the general supervision and control of the mayor and public improvements committee, and the same shall be done in good and workmanlike manner and according to the plans and specifications of this ordinance. The person or persons receiving the contract for the same shall receive no money on such contract until after said improvement shall have been completed by the contractor or contractors, and inspected, approved and received by the city council.

SECTION 12. All owners and occupants of real estate touching or abutting upon said street along the line of said improvement are hereby required to make all contemplated private connections with public sewers, water mains, or gas mains in said street before the work of laying any pavement thereon is commenced. The city clerk shall, without delay, prepare suitable notices and cause the same to be served by the street superintendent or some member of the police force upon all property-owners along the line of said improvement.

SECTION 13. In case any of said owners of property shall, after notice, fail to comply with the requirements of the last preceding section they shall hereafter be debarred from making any openings or excavations in said street along the line of said improvement for the purpose aforesaid without the special permission of the city council, and no such permission shall be granted unless the person applying therefor shall give bond and security to the city to be approved by the mayor conditioned for the prompt filling up and restoration of any break or opening made in any part of such pavement to as good condition as before and for the repair of the same from time to time until the surface shall conform to the proper level of such street.

SECTION 14. That the special taxes hereby levied shall be collected by installments, the first installment being fixed at twenty per cent. of the entire amount of said special taxes, the balance of said taxes being divided into four equal installments, to be collected according to the provisions of the act of the legislature recently passed in relation thereto.

SECTION 15. This ordinance shall take effect from its passage and approval.

Passed this 8th day of June, A. D. 1887.

Approved this 8th day of June, 1887.

M. F. KANAN, *Mayor.*

Attest: F. C. BETZER, *City Clerk.*

"EXHIBIT B."

To the mayor and city council of the city of Decatur:

Your committee appointed by your honorable body to make an estimate of the cost of the improvement of Wood street from the east side of Broadway street to the east side of Webster street as

contemplated by a certain ordinance relating thereto, passed by your honorable body on the 8th day of June, 1887, would beg leave to submit the following estimates:

We estimate the cost of paving Wood street, as above stated, excepting as much thereof as is included in street and alley intersections and crossings of the same, labor, material, and all other expenses attending said paving—

1,929 square yards, at	$3,131 87
We estimate the cost of making and levying the assessment at	130 50
Total	$3,262 37
Cost per square yard	$1 69

11 We estimate the cost, including labor, materials, and other expenses attending the same, of paving the said street and alley intersections and crossings—

329⅔ square yards, at	$494 55
Cost per square yard	1 50

JOHN G. CLOYD,
JAS. S. CARTER,
O. B. GORIN,
Committee.

Decatur, Illinois, June 20th, 1887.

STATE OF ILLINOIS, }
County of Macon, } ss:

I, F. C. Betzer, city clerk of the city of Decatur, in the county and State aforesaid, do hereby certify that the foregoing Exhibit "A" is a true and correct copy of a certain ordinance entitled "An ordinance providing for the paving of East Wood street from the east line of South Broadway to the east line of Webster street," passed by the city council of said city of Decatur on the 8th day of June, A. D. 1887, as the same appears from the records and files of my office.

I also certify that the foregoing "Exhibit B" is a true and correct copy of the estimate made by Jno. G. Cloyd, Jas. S. Carter, and O. B. Gorin of the cost of paving said street as contemplated by said ordinance, as appears from the records and file, of my office.

[SEAL.] F. C. BETZER, *City Clerk.*

12 *Order of Court Appointing Commissioners.*

STATE OF ILLINOIS, }
County of Macon. }

In the County Court, to the July Term, A. D. 1887.

In the matter of the application of the City of Decatur for proceedings to assess the cost of the improvement of East Wood street from Broadway to Webster.

And now, on this 16th day of July, A. D. 1887, comes the City of

Decatur, in said county, by I. R. Mills, city attorney, and files its petition in this the county court of said Macon county, that being the county in which the said city is situated, praying that the cost of said improvement mentioned and specified in said petition be levied and assessed in the manner prescribed by law and said ordinance, and to that end that commissioners might be appointed; that such order and proceedings might be made and directed as should be conformable to law in the premises.

And it appearing to the satisfaction of the court that the ordinance and proceedings mentioned and set forth in said petition had been lawfully passed by the city council of said city of Decatur at the time and in the manner set forth in said petition, that John G. Cloyd, Jas. S. Carter, and O. B. Gorin, three competent persons, were appointed as a committee by the said city council of said city at the time and in the manner set forth in said petition to make an estimate of the cost of said improvement of said East Wood street as prescribed and according to the specification of said ordinance providing for said improvement, in which labor, materials,
13 and all other expense attending the same, together with the cost of making and levying the assessment, were included, and that said estimate was made by said committee and by them reported to the said city council of said city at the time and in the manner set forth in said petition;

And it further appearing to the court that the said estimate and the report of the said committee *was* approved by the said city council of said city on the 20th day of June, A. D. 1887, and that I. R. Mills, city attorney of said city, was on said last-mentioned day directed to file the petition of said city in this honorable court for proceedings to assess the cost of said improvement in the manner provided by said ordinance and the law in such case made and provided;

And it further appearing to the court that the ordinance providing for said improvement, as well as the estimate and report of said committee appointed, are fully set out in said petition as required by law;

And the court being fully advised in the premises and the said proceedings being regular and lawful in all respects, and it appearing to the court that Jas. S. Carter, O. B. Gorin, and B. Z. Taylor are competent persons to be appointed as commissioners, it is therefore ordered by the court that the said Jas. S. Carter, O. B. Gorin, and B. Z. Taylor be, and they are hereby, appointed as commissioners to make the levy and assessment for said improvement in the manner prescribed by such ordinance and the law in such case made and provided, and that they make report therein as required by law, and said commissioners will take all such other and further steps in the premises as may be authorized or required of them by the statute in such case made and provided.

WM. E. NELSON,
County Judge.

14 *Oath of Commissioners.*

STATE OF ILLINOIS, } ss:
County of Macon, }

In the County Court, to the October Term, A. D. 1887.

In the matter of the levy and assessment of special taxes for th paving of East Wood street from the east line of South Broadwa street east to the east line of Webster street.

We, the undersigned, commissioners appointed by the count court of Macon county, in the State aforesaid, to levy and assess th cost of said improvement according to the provisions of a certai ordinance passed by the city council of the city of Decatur on th 8th day of June, A. D. 1887, and according to the provisions of th statute in such case made and provided, do solemnly swear that w will a true and impartial assessment make of the cost of said im provement according to the provisions of said ordinance and th law in such case made and provided to the best of our ability.

JAS. S. CARTER.
B. Z. TAYLOR.
ORVILLE B. GORIN.

Subscribed and sworn to before me this 22d day of September A. D. 1887.

G. P. HARDY,
County Clerk.

Filed Sept. 22, 1887.

15 *Special Tax-Roll.*

DECATUR, ILL., *November 23rd*, 1887.

We, the undersigned, commissioners appointed by the county court of Macon county, Illinois, to make a special tax levy for th improvement of East Wood street from Broadway street to Webste street according to the provisions and requirements of a certai ordinance authorizing and providing for said improvement, passe by the city council of the city of Decatur on the 8th day of June 1887, do hereby report to said court, and certify to the correctness o the same, that the following is our special tax-roll made for such purpose, giving the names of all owners, the description of each lot or parcel of land abutting on the line of said improvement, th number of feet frontage thereof, and the amount of the special tax levied by us against each of such lots or parcels of land, said tax being levied and roll made according to the requirements of th provisions of said ordinance and the statute in such case made and provided.

JAS. S. CARTER,
O. B. GORIN,
B. Z. TAYLOR,
Commissioners.

Filed Nov. 23d, 1887.

16	Owner's name.	Subdivision.	Sec.	T'p.	Rng.	Lot.	Blk.	No. feet frontage.	Square yds.	Cost p'r sq. yd.	Cost of paving.	Additional expenses.	First installment.	Second installment.	Third installment.	Fourth installm't.	Fifth installm't.	Total cost.
	Chas. Rehling	Cassell's Add				9	4	40	91 25	1 53	140 95	4 50	32 25	58 05	58 05	58 05	58 05	144 45
	Do.	Do.				10	4	40	91 25	"	140 95	4 50	32 25	58 05	58 05	58 05	58 05	144 45
	John O'Connor	Do.				11	4	40	91 25	"	140 95	4 50	32 25	58 05	58 05	58 05	58 05	144 45
	Do.	Do.				12	4	40	91 25	"	140 95	4 50	32 25	58 05	58 05	58 05	58 05	144 45
	William Hally	Do.				13	4	40	91 25	"	140 95	4 50	32 25	58 05	58 05	58 05	58 05	144 45
	John Mertz	Do.				14	4	40	91 25	"	140 95	4 50	32 25	58 05	58 05	58 05	58 05	144 45
	A. J. Hornsteine heirs	Do.				15	4	40	91 25	"	140 95	4 50	32 25	58 05	58 05	58 05	58 05	144 45
	B. H. Cassell	Do.				16	4	40	91 25	"	140 95	4 50	32 25	58 05	58 05	58 05	58 05	144 45
	Do.	Do.				17	4	40	91 25	"	140 95	4 50	32 25	58 05	58 05	58 05	58 05	144 45
	Do.	Do.				18	4	24	55	"	84 15	2 52	19 35	16 83	16 83	16 83	16 83	80 67
	Illinois Central R. R. Co.	Their right of way fronting on north side of East Wood st, immediately east of Broadway St.						55½	127 187	"	194 60	5 82	44 74	38 92	38 92	38 92	38 92	200 42
	Miss Ann Schoenle	Lot 3, E. ½ S. W. ¼						65	148 958	"	227 91	6 81	52 39	45 59	45 58	45 58	45 58	224 72
	Mrs. Mary Walser	Wm. Martin's Add				1	1	45¾	104 843	"	160 39	4 80	36 88	32 08	32 08	32 08	32 08	165 19
	Walter Pape	Do.				3	1	44	100 833	"	154 28	4 62	35 48	30 86	30 85	30 86	30 85	158 90
	Mrs. A. A. Ellis	Do.				5	1	44	100 833	"	154 28	4 62	35 48	30 86	30 85	30 86	30 85	158 90
	Mrs. M. A. Naile	Do.				7	1	44	100 833	"	154 28	4 62	35 48	30 86	30 85	30 86	30 85	158 90
	John H. Myers	Do.				9	1	159	364 375	"	557 49	16 71	128 20	39 86	111 50	39 86	111 50	574 20
	Illinois Central R. R. Co.	Their right of way fronting on south side of East Wood St. immediately east of Broadway St.						174	39 531	"	60 48	1 80	13 89	12 40	12 09	12 40	12 40	62 28

17 *Special Tax Notice.*

In the matter of the levy and assessment of special taxes for the paving of East Wood street from the east side of Broadway street to the east side of Webster street.

Notice is hereby given to all persons interested that the city council of the city of Decatur, having ordered the paving of East Wood street from the east side of Broadway street to the east side of Webster street, in the city of Decatur, have applied to the county court of Macon county, Illinois, for the levy and assessment of the cost of said improvements, except the streets and alleys, intersections and crossings, upon the abutting property, according to frontage, and an assessment thereof having been made and returned to said court the final hearing thereof will be had at the February term, 1888, of said court. All persons desiring may then and there appear and make their defense.

Decatur, Illinois, Jan'y 30th, 1888.

JAS. S. CARTER,
O. B. GORIN,
B. Z. TAYLOR,
Commissioners.

Certificate of Publication.

DECATUR, ILL., *Feb.* 10, 1888.

This is to certify that the annexed advertisement has been published ten days in the Decatur Review, a daily and weekly newspaper published in the city of Decatur, in the county of Macon, State of Illinois, the first insertion being on the first day of February, 1888, and the last insertion being on the tenth day of February, 1888.

In testimony whereof I have hereunto affixed my signature the day and date above written.

18 REVIEW PUBLISHING COMPANY, *Publishers*,
Per W. F. THOMPSON, *Sec'y & Treas.*

Printer's fees, $2.25.

STATE OF ILLINOIS, }
County of Macon, } *ss:*

In the County Court, to the February Term, A. D. 1888.

In the matter of the levy and assessment of special taxes for the paving of East Wood street from Broadway street east to the east side of Webster street.

James S. Carter, being duly sworn, on his oath says that he is one of the commissioners appointed in the above-entitled proceedings; that he was sworn to act and has acted as one of said commissioners; that on the 30th day of January, A. D. 1888, he posted up four large printed and written notices of said special assessment, a copy

of which is hereto attached, in four public places in the city of Decatur, Illinois, three of which were in the neighborhood of said improvement, as follows: One on a telegraph pole at cor. of Wood and Broadway street-, one on a telephone pole at cor. of Wood and Broadway streets, and one on a telephone pole near the S. E. cor. of bl'k 7, Cassell's addition to the city of Decatur; also one on the west door of the court-house building, and that he caused said notices to be published at least five consecutive days in the Daily Review, a daily paper published in the city of Decatur, Illinois, publisher's certificate of said publication and the date thereof being hereto attattached.

JAMES S. CARTER.

19 Subscribed and sworn to before me this 14th day of February, 1888.

[SEAL.] ANDREW H. MILLS,
Notary Public.

Filed February 16th, 1888.

Objections by Illinois Central Railroad Company.

STATE OF ILLINOIS, } ss:
Macon County, }

In the County Court, February Term, 1888.

In the matter of the application by the City of Decatur for confirmation by said court of the report of the commissioners appointed to make a special tax levy for the improvement of East Wood street from Broadway street to Webster street, in said city of Decatur.

Now comes the Illinois Central Railroad Company, by Outten & Vail, its attorneys, and objects to the proceedings heretofore had in said matter and to the confirmation of the report of the said commissioners as to all that part of said proceedings and of said report that effects the property of said company as shown by said report, and for objections states as follows:

First objection. All of said proceedings and said levy and report of said commissioners are invalid and without authority of law as to the property of said company for the reason that by the charter of said company it, the said company, is relieved and made exempt from all taxation of every kind except as in said charter pro-
20 vided, and that such special taxation is not permitted by the provisions of said charter.

Second objection. From the report of said commissioners and said proceedings it does not appear with any reasonable certainty what particular property or lot of ground of said company is charged with the special tax attempted to be levied thereon, for *as* the street at that point runs east and west, while the right of way of said company crosses said street diagonally, so that the frontage of said company's right of way on the south side of said street, is taken at right angles with the street, would include but a small triangle, nearly

all of which would be in Broadway street, while such frontage on the north side of said Wood street, if taken in the same way, would include a strip of ground 55½ feet in width and running in an angle across the right of way of said company, while, on the other hand, if it is intended that the frontage so taxed shall include a strip running parallel with the center line of said right of way, it is not specified or in any way made certain how far said strips shall extend, whether one-half a block or to the next street or to the city limits; hence it is impossible from anything in said proceedings to determine on what property it is intended that a lien shall be had by virtue of such proceedings.

Third objection. If it shall be claimed that the assessment attempted to be made in this case is not a tax such as intended by the provisions in the charter of said company for the reason that it is simply a remuneration by the company for benefits conferred, then the said company states that the said improvement is
21 more than half a mile from its depot at Decatur, Illinois, and that it is in fact of no benefit whatever to this company, and as to the said company it is a burden without any benefits whatever and lessens the property of said company to the extent of any tax it shall be required to pay.

OUTTEN & VAIL.

Filed February 20th, 1888.

Order of Court Providing for an Amended Tax-Roll.

STATE OF ILLINOIS, } ss:
County of Macon, }

In the County Court, to the February Term, A. D. 1888.

In the matter of the application of the City of Decatur for the levy and assessment of special taxes for the paving of East Wood street.

The above-entitled cause having come on to be heard upon the second objection filed herein by the Illinois Central Railroad Company, the said City of Decatur, by its attorney, move the court to refer said special tax-roll back to the commissioners hereinbefore appointed by the court for the purpose of procuring a definite description of that portion of the right of way of the said Illinois Central Railroad Company lying north of said East Wood street which is sought to be specially taxed for said improvement, with instructions to said commissioners to file instanter an amended tax-roll specifically setting forth the description of that portion of the
22 right of way of said company lying north of said East Wood street, but that said original special tax-roll shall not be changed or amended as to any other lot, block, or parcel of land contained in said roll; and the court being fully advised in the premises, and after said motion has been fully considered by the court, the court sustains said motion, and said commissioners are directed to prepare and file herein instanter an amended special tax-

roll, as prayed for in said motion, but that said amendment shall only apply to the parcel of land mentioned in said motion and no other.

WM. E. NELSON,
County Judge.

Filed March 13th, 1888.

G. P. HARDY,
County Clerk.

Amended Special Tax-Roll.

DECATUR, ILLINOIS, *March 13th*, 1888.

We, the undersigned commissioners, appointed by the county court of Macon county, Illinois, to make a special tax levy for the improvement of East Wood street from Broadway street to Webster street, according to the provisions and requirements of a certain ordinance authorizing and providing for said improvement, passed by the city council of the city of Decatur on the 8th day of June, 1887, do hereby report to said court and certify to the correctness of the same that the following is our amended special tax-roll, giving the description of the parcel of land abutting on the line of said improvement owned by the said Illinois Central Railroad Company, the number of feet frontage thereof, and the amount of the
23 special tax levied by us against said parcels of land, said tax being levied and roll made according to the requirements and provisions of said ordinance and the statute in such case made and provided. This amended tax-roll is made and returned under and by virtue of an order of the county court, on the motion of said city, in order to set forth more definitely the description of the parcel of land owned by the said Illinois Central Railroad Company contained in said original tax-roll.

JAS. S. CARTER,
O. B. GORIN,
B. Z. TAYLOR,
Commissioners.

24

Owner's name.	Subdivision.	Sec.	Tp.	Rng.	Lot.	Blk.	No. feet frontage.	Sq. yards.	Cost p'r sq. y'd.	Cost of paving.	Additional expenses.	First installm't.	Second installm't.	Third installm't.	Fourth installm't.	Fifth installm't.	Total cost.
Illinois Central Railroad Co.	A parcel of land, a portion of the right of way of the Illinois Central Railroad Company, being described as follows: Commencing at the intersection of the north line of East Wood street, in the said city of Decatur, with the east line of the right of way of the said Illinois Central Railroad Company, thence north 29 degrees east, along the east line of the said right of way of said company, to the south line of East William street, in said city, being the first street intersecting said right of way north of said Wood street; thence west, along the south line of East William street, to the east rail of the main track of said company, extending along said right of way; thence south 29 degrees west, along said east rail of said main track, to a point where said rail intersects with the east line of Broadway street; thence south, along the east line of said Broadway street, to the intersection of said east line of said Broadway street with the north line of said East Wood street; thence east fifty-five and one-half feet to the place of beginning.....	.....	.....	.....	.....	.....	55½	127.187	1 53	194 60	5 82	44 74	38 92	38 92	38 92	38 92	200 42

Filed Mar. 13, 1888.

[Endorsed:] No. 2.

G. P. HARDY, *Co. Clerk.*

25 *Objections of I. C. R. R. Co.*

STATE OF ILLINOIS, }
Macon County, } *ss:*

In the County Court, February Term, 1888.

In the matter of the application of the City of Decatur for confirmation by said court of the report of the commissioners appointed to make a special tax levy for the improvement of East Wood street from Broadway street to Webster street, in said city of Decatur.

Now comes the Illinois Central Railroad Company, by Outten & Vail, its attorneys, and files its objections to the amended report of said commissioners as to the assessment of a part of the right of way of said company on the north side of said Wood street, and, not withdrawing or waiving its exceptions heretofore filed in the said cause, but insisting upon and renewing the same, for further objections to the said report as amended, the said objector says that said report ought not to be confirmed and such special tax levied on the property described in the said amended report, for the reason that the property as described in said amended report does not abut on said Wood street; that only a portion of the track so described in said amended report abuts thereon.

ILLINOIS CENTRAL RAILROAD COMPANY,
By OUTTEN & VAIL, *Attorneys.*

Filed March 13th, 1888.

G. P. HARDY,
County Clerk.

26 *Order of Court Confirming Tax-Roll as Against the Property of the Illinois Central Railroad Company.*

STATE OF ILLINOIS, }
County of Macon, } *ss:*

In the County Court, to the February Term, 1888.

In the matter of the petition of the City of Decatur for the levy of special taxes for the paving of East Wood street.

And now, on this 13th day of March, 1888, being one of the regular days of the February term of said court, the above-entitled proceedings came on to be heard upon the hearing and submission of evidence upon the second objection filed herein by the Illinois Central Railroad Company; whereupon the said City of Decatur, through its attorney, moved the court to refer said special tax-roll back to the commissioners hereinbefore appointed by the court for the purpose of procuring a more definite description of that portion of the right of way of said company lying north of said Wood street which is sought to be specially taxed for said improvement,

with instructions to said commissioners to file instanter an amended tax-roll, that will more fully appear by reference to an order of said court duly filed herein; and upon said commissioners having filed an amended special tax-roll instanter ordered by said court, and the said Illinois Central Railroad Company having filed herein an additional objection to said amended special tax-roll, whereupon, this cause having come on to be heard by the court upon the application of said City of Decatur, through its said attorney, to overrule said objection to said amended special tax-roll and for the
27 confirmation of said amended special tax-roll as prepared and returned herein by the said commissioners hereinbefore appointed by this court for the purpose of preparing and returning said special tax-roll—

The court, after hearing all the evidence submitted, both on the part of the city and on the part of said company, together with the stipulation and agreement entered into between the parties hereto, doth find that the special tax-roll as amended, prepared, and filed herein by said commissioners is regular and is in strict conformity with the requirements of the statute in such case made and provided; that the proceedings of said commissioners have been regular, valid, and in compliance with the requirements of the law; that said commissioners certified said original special tax-roll to this court more than ten days prior to the first day of the present term; that said commissioners sent by mail to each owner of premises taxed whose name and place of residence was known to them a notice as required by law; that said commissioners also caused at least ten days' notice to be given by posting notices in at least four public places in the city of Decatur, in the county aforesaid, two of which were in the neighborhood of said improvement, and that said commissioners caused a like notice to be published in a daily newspaper published in said city for five successive days, the first publication thereof being more than ten days before the first day of the present term of this court.

It is therefore ordered and adjudged by the court that the objections filed herein by said Illinois Central Railroad Company be, and the same are hereby, overruled, and that the special tax-roll as amended, prepared, and filed herein by said commissioners and the amount levied and especially taxed against the parcels
28 of land mentioned and set forth in said special tax-roll and amended special tax-roll as belonging to said company be, and the same is hereby, in all respects confirmed, and that said special tax-roll so amended shall be taken to stand good, valid, and effectual to all intents and purposes according to the form and meaning thereof as made and returned by said commissioners, and judgment is hereby entered against said parcels of land severally and respectively as mentioned and set forth in said special tax-roll as amended for the full amount therein charged against each of said parcels of land, and that the clerk of this court certify said roll, together with this judgment, to the special-tax collector, as required by the statute in such case made and provided. Whereupon the said Illinois Central Railroad Company prayed an

appeal to the supreme court of the State of Illinois, which is by the court granted upon said company executing and filing herein a good and sufficient bond in the penal sum of six hundred dollars ($600), to be approved by the court, within thirty days from the date hereof; that upon the giving, filing, and approval of said bond as above provided said clerk shall refrain from all acts looking to the collection of said special taxes charged against said company.

The said Illinois Central Railroad Company is given by the court thirty (30) days in which to prepare and submit a bill of exceptions in the above-entitled cause.

WM. E. NELSON,
County Judge.

Filed March 13th, 1888.

Bill of Exceptions.

STATE OF ILLINOIS, } ss:
Macon County, }

In the County Court, February Term, A. D. 1888.

29 In the matter of the petition of the City of Decatur for the levy of special taxes for the paving of East Wood street.

Objections of the Illinois Central Railroad Company to the confirmation of special tax against its right of way.

Be it remembered that on this 13th day of March, A. D. 1888, the petitioner, The City of Decatur, to maintain the issues raised by the petition and at issue in the above cause, offered for evidence in its behalf a certified copy of an ordinance of the City of Decatur entitled "An ordinance providing for the paving of East Wood street from the east line of South Broadway to the east line of Webster street;" to the introduction of which ordinance the Illinois Central Railroad Company then and there objected, but the court overruled the said objection and permitted the ordinance to be read; to the ruling of the court in allowing said ordinance to be introduced and read in evidence the Illinois Central Railroad Company, by its counsel, then and there excepted; which said ordinance is in the words and figures following—that is to say:

Ordinance introduced in evidence and marked "Exhibit A."

An ordinance providing for the paving of East Wood street from the east line of South Broadway to the east line of Webster street.

30 Be it ordained by the city council of the city of Decatur,

SECTION 1. That East Wood street in the city of Decatur, from the east line of South Broadway street, east to the east line of Webster street, to the width of forty feet, twenty feet on each side of the central line thereof shall be improved by grading, graveling, guttering and paving with brick.

SECTION 2. That said grading, graveling, guttering and paving of said Wood street as provided in the foregoing section, and more

particularly hereinafter set forth, is hereby declared to be a local improvement, the cost thereof to be paid for by the special taxation of the lots, parts of lots and parcels of land abutting upon said street, on both sides thereof, along the line of said improvement.

SECTION 3. That said grading, graveling, guttering and paving shall be made and done according to the following plans and specifications: Said East Wood street from the east line of Broadway street, to the east line of Webster street, for the distance of twenty feet on each side of the central line thereof, shall be excavated to the depth of twelve (12) inches; along the central line thereof, below the established grade thereof and at the outer edges of said street, where the same is so excavated on either side thereof, at a distance of eighteen inches toward the center of said street, respectively to a depth of twenty-two inches, the said excavation of said street to be in the form of a segment of a circle, the portion — said street between said eighteen-inch lines aforesaid and the outer edges of said street so excavated on both sides thereof, shall be so graded and paved in a similar manner as the balance of said street, so as to make a good and substantial gutter along said eighteen-inch lines; that when said street shall have been so excavated there shall be placed thereon a bed of sand and gravel four inches in depth, said sand and gravel to be well tamped so as to form a smooth and compact surface;
31 that on said bed of sand and gravel so tamped and made smooth shall be laid on their flat surface a close floor of extra hard-burned, sound, and shapely paving brick, said brick to be laid longitudinally with the street, and the joints broken in each course, said brick to be put closely together so as to form a smooth and solid floor; that over said floor of brick so laid there shall be placed a layer of screened sand one (1) inch in thickness so as to fill all crevices and made smooth so as to form an even floor for the subsequent layer of brick; that upon said layer of sand so made smooth, there shall be placed and laid on their edges in close contact with each other, a layer of extra hard-burned paving brick, said brick to be laid at right angles with the line of said street, joints to be broken in each alternate course of brick, being sound, nothing less than a half brick to be used; that after said bricks are so laid, a thin layer of screened dry sand shall be swept over said pavement, so as to fill all crevices therein, and said pavement shall be thoroughly tamped or rolled with a heavy roller, after which a top dressing of clean screened sand, not less than one (1) inch in depth shall be placed over the entire surface of said improvement; there shall be two cross-walks at the intersection of each street, one on each side so as to connect with the sidewalks, of the width of six (6) feet to be formed by an oval elevation across said street, so that the center of each cross-walk will be four (4) inches below the grade of the sidewalk with which they connect, and slope to meet the grade of the street, and to extend to a point within four (4) feet of the outer edges of said improvement, so that aprons may be placed over gutters.
32 SECTION 4. The following-named persons to wit: J. S. Carter, J. G. Cloyd, and O. B. Gorin are hereby appointed a committee to make a separate estimate of the cost of paving said street mentioned

in section one (1) of this ordinance, excepting so much thereof as is included in the street and alley intersections and crossings of the same, of the cost of labor, materials and all other expenses attending the same, including the grading, graveling, guttering and paving, and the cost of levying and collecting the special taxes hereinafter ordered; also a separate estimate of the cost, including labor, material and all other expenses attending the same, of paving the said street and alley intersections and crossings, and the said J. S. Carter, J. G. Cloyd and O. B. Gorin shall report in writing to the city council showing the costs and expenses aforesaid, at the next regular meeting of that body or as soon thereafter as may be.

SECTION 5. The cost and expenses of making said improvement to the amount of the cost of paving the street and alley intersections and crossings embraced therein, shall be included in the annual appropriation bill or ordinance and levied and collected with, and as a part of the general taxes of the city for the next current, fiscal year.

SECTION 6. The remainder of the cost of said improvement shall be paid for by special taxation, and for that purpose a special tax equal in amount to the whole cost of paving said street not included in the intersections and crossings aforesaid, and the cost of all labor and materials required therefor and all other expenses connected with the same, including the cost of levying, assessing and collecting said special tax is hereby ordered to be levied, assessed and collected upon and from each of said lots, parts of lots and parcels of
33 land in proportion to the frontage thereof upon the said street along the line of said improvement so ordered to be made.

SECTION 7. Upon the filing of the report of the said J. S. Carter, J. G. Cloyd and O. B. Gorin, as hereinbefore required, and the approval thereof by the city council the city attorney is hereby required to file the proper petition in the county court of Macon county for proceedings to assess that portion of the cost of said improvement, required to be raised by special taxation, according to the provisions of the statute in such case made and provided.

SECTION 8. The said grading, graveling guttering and paving of said street along the line of said improvement as herein provided, the labor and material required to do and make the same, shall be let by contract in parcels or altogether, as the city council may determine upon the final inspection of the bids. The city clerk shall advertise in some one or more of the city papers having a general circulation that the contract for making said improvements, including the labor and material, will be let to the lowest responsible bidder, and shall state in said advertisement, that sealed bids will be received for a period of thirty (30) days after the date of the publication of said notice for the materials, for the labor, and for the entire improvement, including the materials and labor. When said bids shall have been received, said clerk shall submit the same to the city council, which shall determine the lowest, responsible bid, and let the contract, which shall be reduced to writing, to the lowest responsible bidder. Provided that said council shall have the right to reject any and all bids.

34 SECTION 9. Such contract shall be signed by the mayor and countersigned by the city clerk; said contract shall contain among other things a covenant in substance to the effect that the contractor or contractors shall be paid from said special tax and that they, the said contractor or contractors, shall have no lien upon the city in any event over and above the amount hereinbefore provided to be raised for said improvement by general taxation except from the collection of the special taxes ordered to be levied and assessed by the city council for the work so contracted.

SECTION 10. The city council shall have the right to reserve for said city all or any portion of the dirt that may be necessary to be removed from the street on account of the excavation thereof, the dirt to be placed on wagons furnished by the city, by the contractor or contractors. Provided, the street superintendent may require the contractor or contractors to place such dirt or any part thereof upon adjacent boulevards at any place within two hundred (200) feet of the place of excavation.

SECTION 11. The making of the improvement shall be under the general supervision and control of the mayor and public improvements committee, and the same shall be done in a good and workmanlike manner and according to the plans and specification of this ordinance. The person or persons receiving the contract for the same shall receive no money on said contract until after said improvements shall have been completed by the contractor or contractors and inspected, approved and received by the city council.

SECTION 12. All owners and occupants of real estate touching or abutting upon said street along the line of said improvement are hereby required to make all contemplated private connections
35 with public sewers, water mains, or gas mains in said street, before the work of laying any pavement thereon is commenced. The city clerk shall without delay, prepare suitable notices and cause the same to be served by the street superintendent or some member of the police force upon all property-owners along the line of said improvement.

SECTION 13. In case any of said owners of property shall, after notice, fail to comply with the requirements of the last preceding section they shall hereafter be debarred from making any openings or excavations in said street, along the line of said improvement, for the purpose aforesaid, without the special permission of the city council and no such permission shall be granted unless the person applying therefor shall give bond and security to the city, to be approved by the mayor, conditioned for the prompt filling up and restoration of any break or opening made in any part of said pavement to as good condition as before and for the repair of the same from time to time until the surface shall conform to the proper level of such street.

SECTION 14. That the special taxes hereby levied shall be collected by installments, the first installment being fixed at twenty per cent. of the entire amount of said special taxes; the balance of said taxes being divided into four equal installments, to be collected accord-

ing to the provisions of the act of the legislature recently passed in relation thereto.

SECTION 15. This ordinance shall take effect from its passage and approval.

Passed this 8th day of June, A. D. 1887.

Approved this 8th day of June, 1887.

M. F. KANAN, *Mayor.*

Attest: F. C. BETZER, *City Clerk.*

36 The City of Decatur, the petitioner, in its behalf offered in evidence the estimate of the commissioners, marked "Exhibit B;" to the introduction and reading of which the Illinois Central Railroad Company then and there objected, but the court overruled the objection, and said estimate was read as follows:

"EXHIBIT B."

To the mayor and city council of the city of Decatur:

Your committee appointed by your honorable body to make an estimate of the cost of the improvement of Wood street from the east side of Broadway street to the east side of Webster street as contemplated by a certain ordinance relating thereto, passed by your honorable body on the 8th day of June, 1887, would beg leave to submit the following estimates: We estimate the cost of paving Wood street, as above stated, excepting as much thereof as — included in street and alley intersections and crossings of the same, labor, material, and all other expenses attending said paving—

1,929 square yards, at	$3,131 87
We estimate the cost of making and levying the assessment at	130 50
Total	$3,262 37
Cost per square yard	$1 69

We estimate the cost, including labor, material, and all other expenses attending the same, of paving the said street and alley intersections and crossings—

329⅓ square yards, at	$494 55
Cost per square yard	1 50

37 JOHN G. CLOYD,
JAS. S. CARTER,
O. B. GORIN,
Committee.

Decatur, Illinois, June 20th, 1887.

STATE OF ILLINOIS, } ss:
Macon County, }

I, F. C. Betzer, city clerk of the city of Decatur, in the county and State aforesaid, do hereby certify that the foregoing "Exhibit A" is a true and correct copy of a certain ordinance entitled "An ordi-

nance providing for the paving of East Wood street from the east line of South Broadway to the east line of Webster street," passed by the city council of said city of Decatur on the 8th day of June, A. D. 1887, as the same appears from the records and files of my office.

I also certify that the foregoing "Exhibit B" is a true and correct copy of the estimate made by John G. Cloyd, Jas. S. Carter, and O. B. Gorin of the cost of paving said street as contemplated by said ordinance, as appears from the records and files of my office.

[SEAL.] F. C. BETZER, *City Clerk.*

To the ruling of the court in allowing said "Exhibit B" to be introduced and read the Illinois Central Railroad Company, by its counsel, then and there excepted.

Petitioner in its behalf also offered in evidence the action
38 of the city counsel of the city of Decatur approving the estimate of the cost of the improvement and direction to file petition; to the introduction and reading of which the Illinois Central Railroad Company then and there objected, but the court overruled the objection, and said order or action of the city council was read as follows:

Proceedings of City Council Approving Estimate and Directing Attorney to File Petition, &c.

DECATUR, ILLINOIS, *June 20th*, 1887.

Alderman Harwood moved that the estimate be approved and the city attorney be instructed to take the necessary steps for proceedings in the county court. Adopted.

To the ruling of the court in allowing said proceedings of the city council to be introduced and read the Illinois Central Railroad Company, by its counsel, then and there excepted.

Petitioner in its behalf also offered in evidence the order of court appointing commissioners; also the oath of the commissioners and the tax-roll and amended tax-roll; to the introduction and reading of each and all of which the Illinois Central Railroad Company, by its counsel, then and there excepted, but the court overruled each objection thereto, and said order of court appointing commissioners, the oath of commissioners, the tax-roll, and amended tax-roll were each and all introduced and read as follows:

Order of Court Appointing Commissioners.

STATE OF ILLINOIS, }
County of Macon. }

In the County Court, to the July Term, A. D. 1887.

In the matter of the application of the City of Decatur for proceedings to assess the cost of the improvement of East Wood
39 street from Broadway to Webster.

And now, on this 16th day of July, A. D. 1887, comes the City of Decatur, in said county, by I. R. Mills, city attorney, and files this

petition in this the county court of said Macon county, that being the county in which said city is situated, praying that the cost of said improvement mentioned and specified in said petition be levied and assessed in the manner prescribed by law and said ordinance, and to that end that commissioners might be appointed; that such order and proceedings might be made and directed as should be conformable to law in the premises.

And it appearing to the satisfaction of the court that the ordinance and proceedings mentioned and set forth in said petition had been lawfully passed by the city council of said city of Decatur at the time and in the manner set forth in said petition; that John B. Cloyd, Jas. S. Carter, and O. B. Gorin, three competent persons, were appointed as a committee by the said city council of said city at the time and in the manner set forth in said petition to make an estimate of the cost of said improvement of said East Wood street as prescribed and according to the specification of said ordinance providing for said improvement, in which labor, materials, and all other expenses attending the same, together with the cost of making and levying the assessment, were included, and that said estimate was made by said committee and by them reported to the said city council of said city at the time and in the manner set forth in said petition;

And it further appearing to the court that the said estimate and the report of the said committee *was* approved by the said city council of said city on the 20th day of June, A. D. 1887, and that I. R. Mills, city attorney of said city, was on said last-
40 mentioned day directed to file the petition of said city in this honorable court for proceedings to assess the cost of said improvement in the manner provided by said ordinance and the law in such case made and provided;

And it further appearing to the court that the ordinance provided for said improvement, *was* as well as the estimate and report of the said committee appointed, are fully set out in said petition as required by law;

And the court being fully advised in the premises and the said proceedings being regular and lawful in all respects, and it appearing to the court that James S. Carter, O. B. Gorin, and B. Z. Taylor are competent persons to be appointed as commissioners, it is therefore ordered by the court that the said Jas. S. Carter, O. B. Gorin, and B. Z. Taylor be, and they are hereby, appointed as commissioners to make the levy and assessment for said improvement in the manner prescribed by said ordinance and the laws in such case made and provided, and that they make report therein as is required by law, and said commissioners will take all such other and further steps in the premises as may be authorized or required of them by the statute in such case made and provided.

WM. E. NELSON,
County Judge.

Oath of Commissioners.

STATE OF ILLINOIS, } ss:
County of Macon, }

In the County Court, to the October Term, A. D. 1887.

In the matter of the levy and assessment of special taxes for the paving of East Wood street from the east line of South Broadway street east to the east line of Webster street.

41 We, the undersigned, commissioners appointed by the county court of Macon county, in the State aforesaid, to levy and assess the cost of said improvement according to the provisions of a certain ordinance passed by the city council of the city of Decatur on the 8th day of June, A. D. 1887, and according to the provisions of the statute in such case made and provided, do solemnly swear that we will a true and impartial assessment make of the cost of said improvement according to the provisions of said ordinance and the law in such case made and provided to the best of our ability.

JAS. S. CARTER.
B. Z. TAYLOR.
ORVILLE B. GORIN.

Subscribed and sworn to before me this 22d day of Sept., A. D. 1887.

G. P. HARDY,
County Clerk.

Filed Sept. 22, 1887.

Special Tax-Roll.

DECATUR, ILLINOIS, *November 23d*, 1887.

We, the undersigned, commissioners appointed by the county court of Macon county, Illinois, to make a special tax levy for the improvement of East Wood street from Broadway street to Webster street according to the provisions and requirements of a certain ordinance authorizing and providing for said improvement, passed by the city council of the city of Decatur on the 8th day of June, 1887, do hereby report to said court, and certify to the correctness of the same, that the following is our special tax-roll made for
42 such purpose, giving the names of all owners, the description of each lot or parcel of land abutting on the line of said improvement, the number of feet frontage thereof, and the amount of the special tax levied by us against each of such lots or parcels of land, said tax being levied and roll made according to the requirements and provisions of said ordinance and the statute in such case made and provided.

JAS. S. CARTER,
O. B. GORIN,
B. Z. TAYLOR,
Commissioners.

Filed November 23d, 1887.

43	Owner's name.	Subdivision.	Sec.	T'p.	Rge.	Lot.	Blk.	No. feet frontage.	Sq. yards.	Cost p'r sq. yd.	Cost of paving.	Additional expenses.	First instal'm't.	Second instal'm't.	Third instal'm't.	Fourth instal'm't.	Fifth instal'm't.	Total cost.
	Chas. Rehling	Cassell's Add				9	4	40	9[illegible]	1.53	140 95	4 50	32 95	25 05	25 05	25 05	25 05	144 45
	Do.	Do.				10	4	40	9[illegible]	"	140 95	4 50	32 95	25 05	25 05	25 05	25 05	144 45
	John O'Connor	Do.				11	4	40	9[illegible]	"	140 95	4 50	32 95	25 05	25 05	25 05	25 05	144 45
	Do.	Do.				12	4	40	9[illegible]	"	140 95	4 50	32 95	25 05	25 05	25 05	25 05	144 45
	William Bally	Do.				13	4	40	9[illegible]	"	140 95	4 50	32 95	25 05	25 05	25 05	25 05	144 45
	John Mertz	Do.				14	4	40	9[illegible]	"	140 95	4 50	32 95	25 05	25 05	25 05	25 05	144 45
	A. J. Hornstein's heirs	Do.				15	4	40	9[illegible]	"	140 95	4 50	32 95	25 05	25 05	25 05	25 05	144 45
	B. H. Cassel	Do.				16	4	40	9[illegible]	"	140 95	4 50	32 95	25 05	25 05	25 05	25 05	144 45
	Do.	Do.				17	4	40	9[illegible]	"	140 95	4 50	32 95	25 05	25 05	25 05	25 05	144 45
	Do.	Do.				18	4	24	9[illegible]	"	81 15	2 52	19 35	15 83	15 83	15 83	15 83	86 67
	Ill. Central R. R. Co.	Their right of way fronting on north side of East Wood St. immediately east of Broadway St.	14	16	21			557 2/3	127.187	"	191 69	2 82	44 74	38 92	38 92	38 92	38 92	200 42
	Miss Ann Schoenle	Lot 5, E. ½ S. W. ¼						65	198.958	"	227 91	6 81	62 39	45 59	45 58	45 58	45 58	294 72
	Mrs. Mary Walker	Wm. Martin's Add				1	1	45 1/3	104.843	"	160 39	4 50	36 85	32 08	32 08	32 08	32 07	165 19
	Walter Pope	Do.				2	1	44	140.833	"	154 95	4 62	35 48	30 86	30 86	30 86	30 85	158 90
	Mrs. A. A. Bills	Do.				3	1	44	140.833	"	154 95	4 62	35 48	30 86	30 86	30 86	30 85	158 90
	Mrs. M. A. Naile	Do.				4	1	44	140.833	"	154 95	4 62	35 48	30 86	30 86	30 86	30 85	158 90
	John H. Myers	Do.				9	1	159	364.375	"	567 49	16 71	128 59	111 50	111 50	111 50	111 50	574 50
	Ill. Central R. R. Co.	Their right of way fronting on south side of East Wood street immediately east of Broadway St.						174	39.531	"	60 48	1 80	13 89	12 10	12 09	12 10	12 10	62 98

44 *Amended Special Tax-Roll.*

DECATUR, ILL., *March 13th*, 1888.

We, the undersigned commissioners, appointed by the county court of Macon county, Illinois, to make a special tax levy for the improvement of East Wood street from Broadway street to Webster street, according to the provisions and requirements of a certain ordinance authorizing and providing for said improvement, passed by the city council of the city of Decatur on the 8th day of June, 1887, do hereby report to said court and certify to the correctness of the same that the following is our amended special tax-roll, giving the description of the parcels of land abutting on the line of said improvement owned by the said Illinois Central Railroad Company, the number of feet frontage thereof, and the amount of the special tax levied by us against said parcels of land, said tax being levied and roll made according to the requirements and provisions of said ordinance and the statute in such case made and provided. This amended tax-roll is made and returned under and by virtue of an order of the county court, on motion of said city, in order to set forth more definitely the description of the parcel of land owned by the said Illinois Central Railroad Company contained in said original tax-roll.

JAS. S. CARTER,
O. B. GORIN,
B. Z. TAYLOR,
Commissioners.

Filed March 13th, 1888.

GEO. P. HARDY,
County Clerk.

45																			
Owner's name.	Subdivision.	Sec.	T'p.	Rng.	Loc.	R'R.	No. feet frontage.	Sq. yards.	Cost p'r sq. y'd.	Cost of paving.	Additional expenses.	First installm't.	Second installm't.	Third installm't.	Fourth installm't.	Fifth installm't.	Total cost.
Illinois Central Railroad Co.	A parcel of land, a portion of the right of way of the Illinois Central Railroad Company, being described as follows: Commencing at the intersection of the north line of East Wood street, in the said city of Decatur, with the east line of the right of way of the said Illinois Central Railroad Company, thence north 29 degrees east, along the east line of the said right of way of said company, to the south line of East William street, in said city, being the first street intersecting said right of way north of said Wood street; thence west, along the south line of East William street, to the east rail of the main track of said company, extending along said right of way; thence south 29 degrees west, along said east rail of said main track, to a point where said rail intersects with the east line of Broadway street; thence south, along the east line of said Broadway street, to the intersection of said east line of said Broadway street with the north line of said East Wood street; thence east fifty-five and one-half (55½) feet to the place of beginning.....						55½	127.187	1 53	194 60	5 82	44 74	38 92	38 92	38 92	38 92	200 42

46 To the ruling of the court allowing said order of court, oath, and rolls to be read the Illinois Railway Company, by its counsel, then and there excepted.

And this was all the evidence offered by petitioner.

And the Illinois Central Railroad Company in its behalf offered and read in evidence the title and section of its charter as follows:

Laws 1851, p. 6.

An act to incorporate the Illinois Central Railroad Company. In force Febr'y 10th, 1851.

SEC. 22. The lands selected under said act of Congress and hereby authorized to be conveyed, shall be exempt from all taxation under the laws of this State, until sold and conveyed by said corporation or trustees; and the other stock, property and effects of said company shall be in like manner exempt from taxation for the term of six years from the passage of this act. After the expiration of six years, the stock, property and assets belonging to said company, shall be listed by the president, secretary or other officers with the auditor of State, and an annual tax for State purposes shall be assessed by the auditor upon all the property and assets of every name, kind, and description belonging to said corporation. Whenever the taxes levied for State purposes shall exceed three-fourths of one per centum per annum such excess shall be deducted from the gross proceeds or income herein required to be paid by said corporation to the State, and the said corporation is hereby exempted from all taxation of every kind except as herein provided for,
47 the revenue arising from said taxation and the said five per cent. of gross or total proceeds receipts or income aforesaid, shall be paid into the State treasury in money and applied to the payment of interest-paying State indebtedness until the extinction thereof. Provided in case the five per cent. provided to be paid into the State treasury and the State taxes to be paid by the corporation do not amount to seven per cent. of the gross or total proceeds, receipts or income, then the company shall pay into the State treasury the difference, so a- to make the whole amount paid equal at least to seven per cent. of the gross receipts of said corporation."

Said Illinois Central Railroad Company also introduced and read in evidence the following stipulation and plat:

In the Matter of the Application of the CITY OF DECATUR.

STATE OF ILLINOIS, } ss:
Macon County, }

In the County Court, at the February Term, 1888.

In the matter of the application of the city of Decatur for confirmation by said court of the report of the commissioners appointed to make a special tax levy for the improvement of East Wood street from Broadway street to Webster street, in said city of Decatur.

Upon the hearing of the objections made by the Illinois Central

Railroad Company to the confirmation of said report, it is agreed by and between the said city of Decatur and the said Illinois Central Railroad Company that the special tax attempted to be con-
48 firmed in this case as against the said objector is attempted to be levied on the right of way of the said objector where the said right of way abuts upon said Wood street and immediately east of Broadway street, and that at said point the said Wood street runs east and west, while the railroad and its said right of way at said point runs in a direction extending from a point about 29 degrees west of south to a point about 29 degrees east of north, and that the annexed plat fairly represents the relative situation of the street and the right of way at the point in controversy.

Witness the signature- of the said parties, made in open court by their said attorneys of record in this cause.

ILLINOIS CENTRAL RAILROAD COMPANY,
By OUTTEN & VAIL, *Attorneys.*
I. R. MILLS, *Attorney for City of Decatur.*

It is further stipulated and agreed by the aforesaid parties that the said Illinois Central Railroad Company is now operating its business and using its said right of way under its charter, which is known as "An act to incorporate the Illinois Central Railroad Company," enacted by the legislature of the State of Illinois and approved and in force Feb. 10, 1851, and that said act is the charter of said company referred to in the objections filed by the said company in the above-entitled cause, and that said charter has been duly accepted by said company.

ILLINOIS CENTRAL RAILROAD COMPANY,
By OUTTEN & VAIL, *Attorneys.*
CITY OF DECATUR,
Per I. R. MILLS, *City Attorney.*

(Here follows diagram marked p. 49.)

50 The foregoing was all the evidence introduced on the trial of said cause; whereupon the court entered judgment confirming the tax and amended tax-rolls; to which decision of the court the said Illinois Central Railroad Company then and there excepted by its counsel.

And forasmuch as the matter above set forth do- not fully appear of record, the Illinois Central Railroad Company tenders this its bill of exceptions and prays that the same may be signed and sealed by the judge of this court, pursuant to the statute in such case made, which is done accordingly this 6th day of April, 1888.

WM. E. NELSON,
County Judge.

I have examined the foregoing bill of exceptions, and woul- say that I am satisfied with it.

I. R. MILLS.

Appeal Bond.

Know all men by these presents that we, Illinois Central Railroad Company and Edward P. Vail, of the county of Macon and State of Illinois, are held and firmly bound unto the City of Decatur, the same county and State, in the penal sum of six hundred dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly, by these presents.

Witness our hands and seals this 5th day of April, A. D. 1888.

The condition of the above obligation is such that whereas
51 the said City of Decatur did, on the 13th day of March, A. D. 1888, in the county court in and for the county of Macon, in the said State, and of the February term thereof, A. D. 1888, recover a judgment against the above-bounden Illinois Central Railroad Company confirming a tax-roll for special taxes for the improvement of East Wood street, in said city of Decatur, charged on the right of way of the Illinois Central Railroad Company for the sum of two hundred and sixty-two and $\frac{71}{100}$ dollars, besides costs of suit, from which said judgment of the said county court in and for the said county of Macon the said Illinois Central Railroad Company has prayed for and obtained an appeal to the supreme court of said State:

Now, therefore, if the said Illinois Central Railroad Company shall duly prosecute its said appeal with effect and, moreover, pay the amount of the judgment, interest, and damages and costs rendered and to be rendered against it in case the said judgment shall be affirmed in said supreme court, then the above obligation to be void; otherwise to remain in full force and virtue.

ILLINOIS CENTRAL RAILROAD COMPANY,
By STUYVESANT FISH, *President.* [SEAL.]
EDWARD P. VAIL. [SEAL.]

Attest:
[SEAL.] JOHN DUNN, *Ass't Sec'y.*

Filed April 6th, 1888.

G. P. HARDY, *Clerk.*

This bond approved by me this 6th day of April, A. D. 1888.
WM. E. NELSON,
County Judge.

52 I, G. P. Hardy, clerk of the county court of Macon county, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of the record and proceedings in a certain cause pending in said court, on the law side thereof, wherein The City of Decatur, Illinois, is plaintiff and The Illinois Central Railroad is defendant.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at Decatur, this 16th day of May, A. D. 1888. G. P. HARDY, *Clerk.*

Assignment of Errors.

First. The court erred in overruling the first exception of appellant.

Second. The court erred in not holding that the property of appellant upon which the tax is attempted to be charged in this case was by the terms of its charter exempted from such tax.

Third. The court erred in not sustaining the second objection of appellant, as to both parcels of the land of appellant upon which such tax is attempted to be charged.

Fourth. The court erred in not sustaining the objections of appellant to the amended tax-roll.

Fifth. The court erred in not sustaining the objections of appellant and in not overruling the petition of appellee.

Sixth. The court erred in entering judgment against the property of appellant for the special tax.

OUTTEN & VAIL,
Attorneys for Appellant.

53 And be it further remembered that afterwards, to wit, on the 7th day of June, A. D. 1888, an order was made by said supreme court in words and figures as follows, to wit:

June Term, 1888, June 7, 1888.

ILLINOIS CENTRAL RAILROAD COMPANY
v.
THE CITY OF DECATUR. } No. 18. Appeal from Macon.

On this day come the said parties, by their attorneys, and this being one of the days set apart for the call of the docket under the rules or orders of the court for this term, and this cause coming now on to be heard, the appellant having entered motion to reverse the judgment and remand said cause and for costs and the appellee having entered motion to affirm the judgment herein and for costs and for *procedendo*, and said motions being taken under advisement for final hearing, and the clerk reporting to the court that said cause is now ready to be taken on the call of the docket, it is ordered by the court that this cause be now submitted upon the record, abstracts, briefs, and arguments filed and to be filed herein under the rules or order- of the court; and it is further ordered by the court that this cause be now taken under advisement for final hearing.

And be it further remembered that afterwards, to wit, on the 27th day of September, A. D. 1888, an opinion was filed in the supreme court, which is in words and figures as follows, to wit:

54 Supreme Court of Illinois, Central Grand Division, June Term, 1888.

THE ILLINOIS CENTRAL RAILROAD COMPANY, Appellant,
vs.
CITY OF DECATUR, Appellee.
} Appeal from County Court of Macon County.

MAGRUDER, *J.*:

This is an appeal from a judgment of the county court of Macon county confirming a special tax assessed by three commissioners for the purpose of paving East Wood street, in the city of Decatur, and charged against a portion of the right of way of the Illinois Central railroad abutting upon said street and contiguous thereto. Upon the return of the assessment-roll appellant appeared in the county court and filed objections, which were overruled.

The city council of Decatur on June 8, 1887, passed an ordinance for the paving of said street, which was declared to be a local improvement, and therein provided that the cost of paving the street and alley intersections and crossings should be paid out of the general taxes, and that the remainder of the cost of said improvement should be paid for by special taxation upon the lots, parts of lots, and parcels of land abutting upon said street on both sides thereof along the line of the improvement in proportion to the frontage thereof upon the street. A committee of three persons was appointed
55 by the ordinance to make an estimate of the cost of the improvement and report the same to the council. On June 20, 1887, the committee made a report of the estimate of the cost of the improvement exclusive of the cost of street and alley intersections and crossings and also showing the cost of such street and alley intersections and crossings, which report was approved by the council on the same day. A petition was then filed in the county court containing copies of the ordinance and of the report and praying that commissioners be appointed, and that the cost of the improvement be levied and assessed as provided in the ordinance and as required by the law in such cases. The court, upon an examination of the petition, ordinance, and report, appointed three commissioners to make the levy and assessment for the improvement in the manner prescribed by the ordinance and by the law in such cases and to make report as required by law. The commissioners so appointed to make the special tax levy reported to the court a special tax-roll, certifying to its correctness and giving therein the names of the owners, the description of the lots or parcels of land abutting on the line of the improvement, the number of feet frontage thereof, and the amount of special tax levied against each of such lots or parcels of land.

Due notice was given that the city council had applied to the county court for the levy and assessment of the cost of said improvement, except street and alley intersections and crossings, upon the abutting property according to frontage, and that there would be a hearing of the assessment made and returned to court at the Feb-

ruary term, 1888. Upon the hearing the objections to the
56 assessment-roll returned to the court were overruled and the assessment as made and returned was confirmed.

The main objection made by the appellant company is that by the terms of its charter its property is exempt from the special tax thus imposed. By section 22 of the act incorporating the Illinois Central Railroad Company, approved February 10, 1851, it is provided that "the said corporation is hereby exempted from all taxation of every kind except as herein provided for," &c. (Session Laws 1851, page 71; Hurd's Rev. Stat. 1885, page 1043, or section 305 and 306 of revenue act.)

It has many times been held by this court "that exemption from taxation does not exempt from special assessments" (County of McLean *v.* City of Bloomington, 106 Ill., 209, and cases there cited). Therefore, if the improvement in the present case had been made by special assessment, appellant's property would not be relieved by the exemption of its charter from its just proportion of the burden of such assessment. Is there any such difference between special assessment and special taxation of contiguous property, as those terms are used in section 9 of article 9 of our constitution, that the general word taxation should be held to include the latter and not the former? It is the settled doctrine of this court that special assessments are not included within the meaning of the word taxation. The question presented for our consideration is whether the same doctrine should also be applied to special taxation of contiguous property.

The 13th section of the act by which the canal lands were granted to the trustees of the Illinois and Michigan canal contains
57 the following provision: "The said lands and lots shall be exempt from taxation of every description, by and under the laws of this State, until after the same shall have been sold and conveyed by the said trustees as aforesaid."

In Canal Trustees *et al. v.* The City of Chicago, 12 Ill., 403, the question was whether land belonging to the canal trustees was exempt under this 13th section from an assessment for opening a street in the city of Chicago, and we there said:

"In our opinion the exemption must be held to apply only to taxes levied for State, county, and municipal purposes. A tax is imposed for some general or public object. It is an exaction made for the purpose of carrying on the government. * * * It is a charge on the estate that lessens its value. In the proportion in which the owner is required to pay is his pecuniary ability diminished. This is the sense in which the term 'taxation' is used and understood. * * * The assessment in question has none of the distinctive features of a tax. It is imposed for a special purpose and not for a general or public object. It is not a charge on the estate which reduces it in value. It substracts nothing from the means or resources of the canal. The improvement is made for the convenience of a particular district, and the property there situated is required to bear the expense in the proportion in which it is benefitted."

So in Mix *v.* Ross *et al.*, 57 Ill., 121, it is said: "There is a plain distinction between taxes which are burdens or charges imposed upon persons or property to raise money for public purposes and assessments for city or village improvements, which are not regarded as burdens, but as an equivalent or compensation for the enhanced value which the property of the person assessed
58 has derived from the improvement."

An application of these definitions to the case in hand will show that "special taxation of contiguous property" as provided for in the constitution is not embraced within the meaning of an ordinary tax. "Special assessment" and "special taxation of contiguous property" are both designated in the constitution as modes or methods by which "local improvements" are to be made. An improvement that is local is for the benefit of a particular locality or "for the convenience of a particular district." Hence a special tax on contiguous property for the purpose of making a local improvement is not "imposed for a general or public object." As the amount of such special tax is equal to the cost of the improvement to be made, the money raised thereby is spent in paying for the improvement, and consequently it cannot be said that it is exacted "for the purpose of carrying on the government." It is raised for a special purpose. Such a special tax of contiguous property cannot be regarded as a "burden or charge imposed upon * * * property to raise money for public purposes," except that the public may indirectly be benefitted by the use of a local improvement.

Moreover, a local improvement necessarily and from its very nature makes better and benefits the locality where it is made. Consequently the contiguous property which is specially taxed for the purpose of making such improvement receives an increase in its value, and its owner finds in such enhanced value an equivalent or compensation for the money paid in discharge of the special tax. Nothing is substracted from his means or resources.

59 It is true that there are recognized differences between a special assessment and special taxation of contiguous property, but these differences consist chiefly in the modes of procedure in the two cases and in the extent and amount of benefits received from the improvement by the property assessed or specially taxed. Both are based upon a supposed benefit to the property charged.

In White *v.* People, 94 Ill., 607, it was said: "Whether or not the special tax exceeds the actual benefit to the lot is not material. It may be supposed to be based on a presumed equivalent. The city council have determined the frontage to be the proper measure of probable benefits. That is generally considered as a very reasonable measure of benefits in the case of such an improvement," &c.

In Braw *et al. v.* Village of Tolono *et al.*, 96 Ill., 255, it is said: "Special taxation as spoken of in our constitution is based upon the supposed benefit to the contiguous property and differs from special assessments only in the mode of ascertaining the benefits. In the case of special taxation the imposition of the tax by the corporate authorities is of itself a determination that the benefits to the

contiguous property will be as great as the burden of the expense of the improvement," &c.

The two cases last referred to are quoted and approved of in Enos *v.* City of Springfield, 113 Ill., 65.

In City of Sterling *v.* Galt, 117 Ill., 11, it is said that special assessment differs from special taxation mainly in this, that the assessment cannot exceed the benefits the property will derive
60 from the improvement, and the owner of the property assessed has the right to have this question passed upon by a jury, etc., whereas in cases of special taxation the jury have nothing to do with the amount which is by ordinance assessed upon contiguous property; but it is also there held that in case of special taxation the whole of the burden is permitted to be imposed upon the contiguous property upon the hypothesis that the benefits will be equal to the burden cast upon the property.

From this review it appears that a more certain and exact equality between the benefits received and the burden imposed must be found to exist in the case of special assessment than in the case of special taxation, and that the mode of procedure in the former is better adapted for accurately ascertaining the benefits than the method pursued in the latter. Nevertheless, in special taxation, as well as in special assessment, the property charged is supposed to receive such benefits from the improvement as will be an equivalent for the amount of the special tax.

As has already been shown, a special assessment is not embraced within the meaning of the word taxation, because the owner of the property assessed gets back the amount of his assessment in the benefits received by his property, and therefore does not bear the burden of a tax. For the same reason special taxation of contiguous property cannot be included within the meaning of the general word taxation, because the owner is compensated for the amount of the tax by the enhanced value of his property and is not subjected to the burden implied in ordinary taxation. There certainly would be no justice in compelling the other property-owners to bear the whole expense of an improvement which confers as great an
61 increase of value proportionally upon appellant's property as upon theirs.

We are therefore of the opinion that appellant's right of way was not exempt by reason of the provision in its charter from the special tax assessed against it.

We see no force in the objections made to the descriptions of the right of way abutting upon the north side of East Wood street and of that abutting upon the south side thereof. The descriptions designate the whole of the triangular piece south of the street and describe a piece north thereof that has never been divided. The frontage on the street of the one is 17¼ feet and on the other 55½ feet. The appellant cannot complain that the description is not broad enough to take in all of the north piece, as this error, if it is an error, enures to appellant's benefit.

The judgment of the county court is affirmed.

Affirmed.

And be it further remembered that on, to wit, *on* the 27th day of September, A. D. 1888, a judgment was entered in said supreme court; which said judgment was in words and figures as follows, to wit:

ILLINOIS CENTRAL RAILROAD COMPANY } Appeal from County
vs. } Court of Macon.
THE CITY OF DECATUR. }

On this day come again the said parties, and the court
62 having diligently examined and inspected as well the record and proceedings aforesaid as the matter and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid nor in the rendition of the judgment aforesaid is there anything erroneous, vicious, or defective, and that that record is no error—

Therefore it is considered by the court that the judgment aforesaid be affirmed in all things and stand in full force and effect, notwithstanding the said matters and things therein assigned for error; and it is further considered by the court that the said appellee recover of and from the said appellant costs by it in this behalf expended, and that it have execution therefor.

63 And be it further remembered that afterwards, to wit, on the second day of November, A. D. 1888, there was filed in my said office a certificate, which is in words and figure as follows, to wit:

In the Supreme Court of the State of Illinois, Central Grand Division.

To the honorable the Chief Justice and associate justices of the Supreme Court of the United States of America, Greeting:

Whereas in the supreme court of the State of Illinois, the same being the highest court of said State in which the cause hereinafter mentioned could be heard, at a term of the central grand division of said court held at Springfield, in the State of Illinois, on the 27th day of September, A. D. 1888, in a cause wherein The Illinois Central Railroad Company was appellant and The City of Decatur was appellee, then in the said supreme court pending on an appeal from a final judgment of the county court of the county of Macon, in said State of Illinois, in favor of the said City of Decatur and against the said Illinois Central Railroad Company for a special tax levied and assessed against the property of the said Illinois Central Railroad Company pursuant to a statute of and an authority exercised under the said State of Illinois, it was maintained on the part of the said Illinois Central Railroad Company that the levying, assessment, and imposition of the said special tax was in violation of a contract contained in an act of the legislature of the said State of
Illinois chartering the said Illinois Central Railroad Com-
64 pany, whereby, in consideration of certain burdens imposed upon the said Illinois Central Railroad Company by the

terms thereof, it was provided that the said Illinois Central Railroad Company should be exempt from all taxation of every kind except as therein provided; and it was further maintained by the said Illinois Central Railroad Company that the special tax hereinabove mentioned was a tax that was not provided for in its said charter, and that the statute of the said State of Illinois under which the said special tax was levied, assessed, and imposed and the proceedings thereunder were repugnant to the clause of the Constitution of the United States of America which provides that no State shall pass a law impairing the obligation of contracts; and whereas on the day hereinabove mentioned a final judgment of the said supreme court of the State of Illinois was entered in the said cause affirming the said judgment of the county court of the county of Macon aforesaid, I do hereby certify that there was drawn in question in the cause [or proceeding above mentioned the validity of a statute of and an authority exercised under said State of Illinois on the ground of their being repugnant to the Constitution of the United States, and that the decision thereon was in favor of their validity.

A. M. CRAIG, [SEAL.]
Chief Justice of the Supreme Court of the State of Illinois.

65 And be it further remembered that on, to wit, the second day of November, A. D. 1888, there was filed in my said office a bond, which is in words and figures as follows, to wit:

Know all men by these presents that the Illinois Central Railroad Company and Benjamin F. Ayer, of the county of Cook and State of Illinois, are held and firmly bound unto the City of Decatur in the penal sum of one thousand dollars ($1,000), good and lawful money of the United States; for the payment of which sum, well and truly to be made, they do bind themselves, their heirs, personal representatives, and successors, jointly and severally, firmly by these presents.

In witness whereof said railroad company hath caused these presents to be signed and sealed by its proper officers and the said Benjamin F. Ayer hath hereunto set his hand and seal this 19th day of October, A. D. 1888.

The condition of the above obligation is such that whereas on, to wit, the 27th day of September, A. D. 1888, the supreme court of the State of Illinois rendered a judgment in a certain cause pending in the said supreme court on an appeal from the county court of the county of Macon, in the State of Illinois, wherein the said railroad company was appellant and the said city was appellee, affirming a judgment rendered in the said cause in the said county court against the said railroad company and in favor of the said city for a special tax, amounting to $262.70;

And whereas the said Illinois Central Railroad Company has sued out of the Supreme Court of the United States a writ of error issued by the Supreme Court last aforesaid to the supreme
66 court of the State of Illinois, wherein the said Illinois Central Railroad Company is named as plaintiff and the said

City of Decatur is named as defendant, for the review of the judgment in the above-mentioned cause:

Now, if the said Illinois Central Railroad Company shall prosecute its said writ of error to effect and, if it fail to make its plea good, shall answer all damages and costs, then this obligation to be void; otherwise to remain in full force and effect.

ILLINOIS CENTRAL RAILROAD COMPANY,
[SEAL.] By STUYVESANT FISH, *Its President.*
Attest: A. G. HACKSTAFF, *Secretary.*
BENJAMIN F. AYER. [SEAL.]

Subscribed and delivered in presence of—
EDWARD R. WOODLE.
MURRAY J. BRADY.

Approved.

A. M. CRAIG,
Chief Justice of the Supreme Court of the State of Illinois.

67 STATE OF ILLINOIS, } ss:
County of Cook, }

Benjamin F. Ayer, of the said county and State, being duly sworn, on oath says that he is the owner in fee of real estate situate in the said county; that the same is free from all incumbrance whatever, and the market value thereof is more than ten thousand dollars.

B. F. AYER.

Subscribed and sworn to before me this 19th day of October, A. D. 1888.

JOHN DUNN,
[NOTARIAL SEAL.] *Notary Public.*

68 And be it further remembered that on, to wit, the 2nd day of November, A. D. 1888, there was lodged in my said office by the said Illinois Central Railroad Company for the said City of Decatur a copy of the writ of error hereto attached, which is in words and figures as follows, to wit:

UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

The President of the United States of America to the chief justice and associate justices of the supreme court of the State of Illinois, central grand division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment which is in said supreme court of said State, before you or some of you, being the highest court of law or equity of said State in which a decision could be had in the said suit between the Illinois Central Railroad Company and the City of Decatur, wherein was drawn in question the validity of a statute of and an

authority exercised under the said State on the ground of their being repugnant to the Constitution of the United States and the decision was in favor of their validity, a manifest error hath happened, to the great damage of the said Illinois Central Railroad Com-
69 pany, as by its complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October next, A. D. 1889, in the said Supreme Court to be then and there held, that, the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, the second Monday of October, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States the one hundred and thirteenth year.

[Seal of Circuit Court of U. S., So'th'n Dist. Ill.]

JAMES T. JONES,
Clerk of the United States Circuit Court,
Southern District of Illinois.

70 I, E. A. Snively, clerk of the supreme court in and for the central grand division, State of Illinois, do hereby certify that the foregoing is a complete, true, and correct copies of the convening order of court for the June term, A. D. 1888, the original record of the county court of Macon county in a certain suit wherein The Illinois Central Railroad was appellant and The City of Decatur was appellee, the orders, opinion, and final judgment of the said supreme court, certificate of the chief justice of the supreme court, copy of the writ of error and bond, as the same appears of record and the files of my office.

In testimony whereof I hereunto set my hand and affix the seal of said supreme court, at Springfield,
Seal of the Supreme Court. this 5th day of November, A. D. 1888.

E. A. SNIVELY,
Clerk Supreme Court.

71 In the Supreme Court of the United States, to the October Term, 1889.

ILLINOIS CENTRAL RAILROAD COMPANY, Plaintiff in Error, *v.* THE CITY OF DECATUR, Defendant in Error.	Error to the Supreme Court of the State of Illinois.

Assignment of Errors.

And now comes The Illinois Central Railroad Company, plaintiff in error, by Benjamin F. Ayer, its attorney, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit:

First. The supreme court of the State of Illinois erred in overruling the objection of the plaintiff in error that the assessment of the taxes in question upon the parcels of land described in these proceedings as parts of the right of way of the Illinois Central Railroad Company was in violation of the contract contained in the act of the legislature of the State of Illinois chartering the said company, and therefore repugnant to the Constitution of the United States.

Second. The supreme court of the State of Illinois erred in adjudging that the parcels of land described in these proceedings as the property of the Illinois Central Railroad Company and as parts of its right of way were not protected from the taxation in ques-
72 tion by virtue of a valid contract between the State of Illinois and the plaintiff in error created by the act of the General Assembly of said State approved and in force February 10th, 1851, entitled "An act to incorporate the Illinois Central Railroad Company," and the acceptance thereof by said company.

Third. The supreme court of the State of Illinois erred in adjudging that the parcels of land described in these proceedings as parts of the right of way of the Illinois Central Railroad Company were subject to special taxation for local improvements under the constitution and laws of the State of Illinois, notwithstanding the provision in the company's charter that "the said corporation is hereby exempted from all taxation of every kind except as herein provided."

By reason whereof the said plaintiff in error prays that said judgmay be reversed, etc.

B. F. AYER,
Attorney for Plaintiff in Error.

Endorsed on cover: Case No. 13,585. Illinois supreme court. No. 381. The Illlnois Central Railroad Company, plaintiff in error, *vs.* The City of Decatur. Filed July 22, 1889.

147 U.S. 190

SUPREME COURT U. S.
FILED.
OCT 10 1892
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1891.

ILLINOIS CENTRAL RAILROAD COMPANY,
Plaintiff in Error,
vs.
THE CITY OF DECATUR,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF FOR PLAINTIFF IN ERROR,

BY

BENJAMIN F. AYER.

71 In the Supreme Court of the United States, to the October Term, 1889.

ILLINOIS CENTRAL RAILROAD COMPANY, Plaintiff in Error, vs. THE CITY OF DECATUR, Defendant in Error.	Error to the Supreme Court of the State of Illinois.

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By reason whereof the said plaintiff in error prays that said judgmay be reversed, etc.

B. F. AYER,
Attorney for Plaintiff in Error.

Endorsed on cover: Case No. 13,585. Illinois supreme court. No. 381. The Illinois Central Railroad Company, plaintiff in error, *vs.* The City of Decatur. Filed July 22, 1889.

147 U.S. 198

Office Supreme Court U. S.
FILED.
OCT 10 1892
JAMES H. McKENNEY,
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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1891.

ILLINOIS CENTRAL RAILROAD COMPANY,
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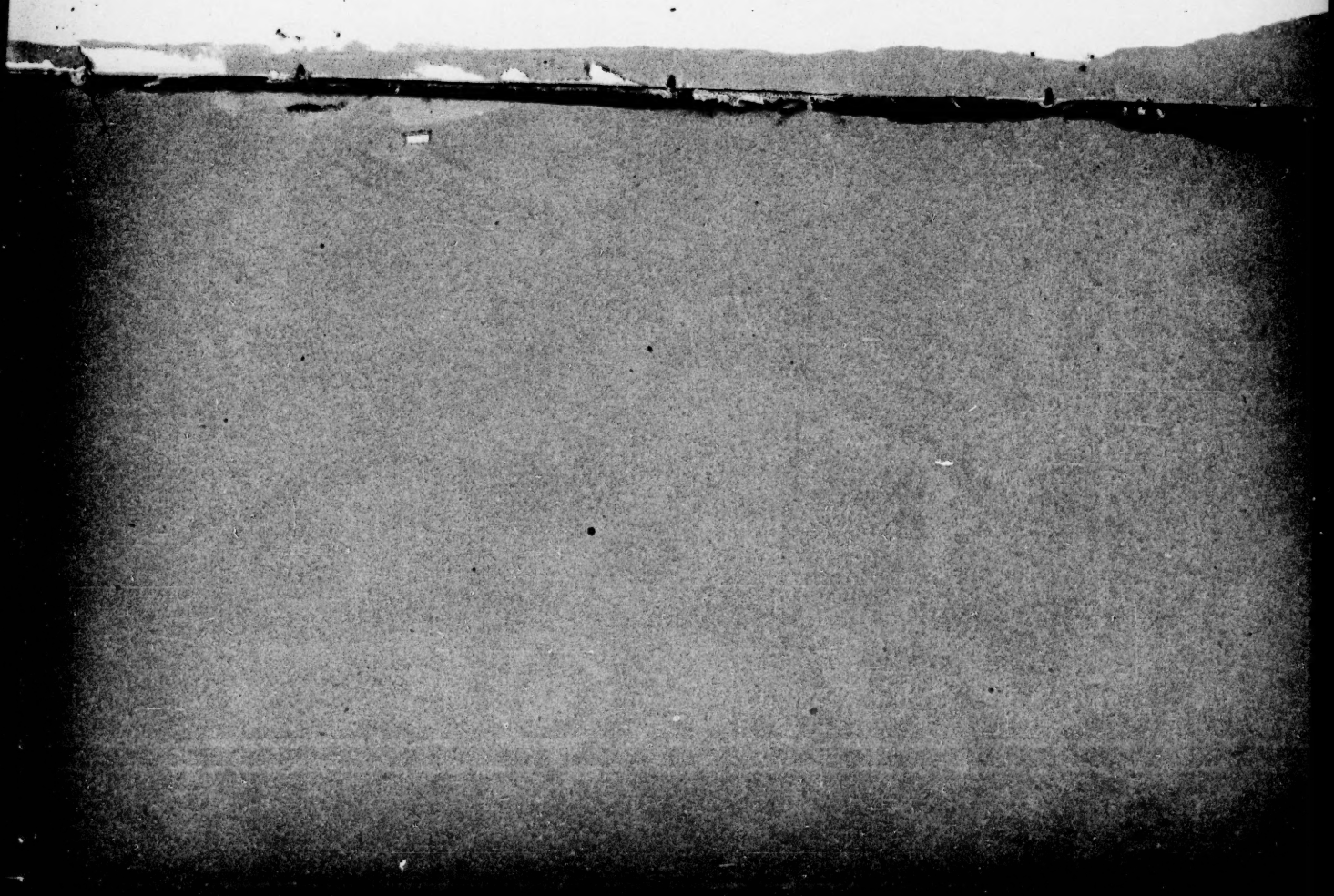
THE CITY OF DECATUR,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF FOR PLAINTIFF IN ERROR,

BY

BENJAMIN F. AYER.



IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1891.

ILLINOIS CENTRAL RAILROAD COMPANY,
Plaintiff in Error,
vs.
THE CITY OF DECATUR,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

STATEMENT.

This case comes before the Court on a writ of error to the Supreme Court of the State of Illinois, to review a judgment of that court in a proceeding at law commenced in the County Court of Macon County in that State, for the assessment of a special tax to defray the cost of grading and paving a street in the city of Decatur.

The assessment was made pursuant to the provisions of the ninth article of an act entitled "An act to provide for the incorporation of cities and villages," approved April 10th 1872, now a part of the 24th chapter of the Revised Statutes of Illinois.

Taxes to the amount of $262.70 were assessed upon two separate parcels of land belonging to the Illinois Central Railroad Company and forming part of its "right of way." (Record, 11, 16.) Objection was made to the assessment on the ground that the tax was one not provided for in the Company's charter, and that by the terms of the charter the property of the Company was exempt from all taxation of every kind except as therein provided. (Record 13.) The objection was overruled and a judgment entered by the County Court against the two parcels of land for the taxes charged thereon. (Record 18.) Exception was taken to the decision and an appeal prayed and allowed to the Supreme Court. (Record 18, 19, 31.)

This action of the County Court was assigned for error in the Supreme Court (Record 33); but that court sustained the ruling, and the judgment was affirmed. (Record 38.)

A certificate under the hand and seal of the Chief Justice was afterwards filed, setting forth that the judgment was for a special tax assessed against the property of the Illinois Central Railroad Company pursuant to a statute of and an authority exercised under the State of Illinois; that it was maintained on the part of the Railroad Company that the imposition of the tax was in violation of a contract contained in an act of the legislature of the State of Illinois chartering the said company, whereby, in consideration of certain burdens imposed upon the company by the terms thereof, it was provided that the said Illinois Central Railroad Company should be exempt from all taxation of every kind except as therein provided; and that it was further maintained by said company that the special tax in question was a tax not provided for in its said charter, and that the statute under which the tax was assessed and the proceedings thereunder were repugnant to the clause of the Constitution of the United States which provides, that no State

shall pass a law impairing the obligation of contracts. The Chief Justice further certifies, that there was drawn in question in the cause the validity of a statute of and an authority exercised under the State of Illinois, on the ground of their being repugnant to the Constitution of the United States, and that the decision thereon was in favor of their validity. (Record 38, 39.)

The opinion of the Court is made part of the record. (Record 34–37.)

The charter of the Illinois Central Railroad Company is a public act of the legislature of Illinois, approved February 10th 1851, a copy of which will be found appended to this brief. The last section of the act reads as follows: "This act shall be deemed a public act, and shall be favorably construed for all purposes therein expressed and declared, in all courts and places whatsoever, and shall be in force from and after its passage."

The Company was incorporated to construct, maintain and operate a railroad with one or more tracks or lines of rails, from the southern terminus of the Illinois and Michigan canal (at LaSalle) to Cairo, at the confluence of the Ohio and Mississippi rivers, with a branch from that line to Chicago, and another, *via* the city of Galena, to a point on the Mississippi river opposite Dubuque in the State of Iowa, in aid of which a grant of public lands had been made to the State by an Act of Congress approved September 20th 1850. (*Vide* sections 2 and 15 of the charter.)* The line, as constructed, was 705 miles long; and the charter (Sec. 15) required the whole to be completed, with at least one line of rails, within (about) ~~six~~ eight years from the date of the organization of the company.

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* This act will be found in the Appendix hereto.

A certain part of the line (50 miles) was to be constructed within two years, and the whole of the main line within four years, from the same date.

By the 18th section of the charter the company was required to pay into the treasury of the State, on the first Monday of December and June of each year, five *per centum* of the gross receipts from the road for the six months then next preceding. The 22nd section provides as follows:

SEC. 22. "The lands selected under said Act of Congress, "and hereby authorized to be conveyed, shall be exempt from "all taxation under the laws of this State until sold and con- "veyed by said corporation or Trustees, and the other stock, "property, and effects of said Company shall be in like man- "ner exempt from taxation for the term of six years from the "passage of this Act. After the expiration of said six "years, the stock, property and assets belonging to said com- "pany shall be listed by the President, Secretary or other "proper officer, with the Auditor of State, and an annual tax "for State purposes shall be assessed by the Auditor upon all "the property and assets of every name, kind and description "belonging to said corporation. Whenever the taxes levied "for State purposes shall exceed three-fourths of one per "centum per annum, such excess shall be deducted from the "gross proceeds or income herein required to be paid by said "corporation to the State, and the said corporation is hereby "exempted from all taxation of every kind, except as herein "provided for. The revenue arising from said taxation, and "the said five per cent. of gross or total proceeds, receipts, "or income aforesaid, shall be paid into the State Treasury, "in money, and applied to the payment of interest-paying "State indebtedness, until the extinction thereof: *Provided*, "In case the five per cent. provided to be paid into the State "Treasury, and the State taxes to be paid by the corporation,

"do not amount to seven per cent. of the gross or total pro-
"ceeds, receipts or income, then the said Company shall pay
"into the State Treasury the difference, so as to make the
"whole amount paid equal at least to seven per cent. of the
"gross receipts of said corporation." (Record, 30.)

It was admitted at the hearing of the case, by stipulation, that the charter had been duly accepted by the Company, that the latter was conducting its business under the said charter, and that the land on which the tax was sought to be levied was part of its "right of way." (Record, 31.)

It does not appear from the record how large the annual payments have been, which the Company has made to the State in compliance with the charter requirements; but it is a matter of common knowledge that they have been enormous. Last year the charge exceeded half a million dollars. So prolific a source of revenue has this been to the State, that on the revision of the constitution in 1870 the following section was submitted separately to the people, to make sure of its adoption, and was ratified by them *nemine contradicente*.

"No contract, obligation or liability whatever, of the Illinois
"Central Railroad Company, to pay any money into the State
"treasury, nor any lien of the State upon, or right to tax prop-
"erty of said company in accordance with the provisions of the
"charter of said company, approved February 10th, in the year
"of our Lord 1851, shall ever be released, suspended, modi-
"fied, altered, remitted, or in any manner diminished or im-
"paired by legislative or other authority; and all moneys de-
"rived from said company, after the payment of the State
"debt, shall be appropriated and set apart for the payment of
"the ordinary expenses of the State government, and for no
"other purposes whatever."

ERRORS ASSIGNED UPON THE RECORD.

"First. The Supreme Court of the State of Illinois erred "in overruling the objection of the plaintiff in error, that the "assessment of the taxes in question, upon the parcels of land "described in these proceedings as parts of the right of way "of the Illinois Central Railroad Company, was in violation of "the contract contained in the act of the legislature of the "State of Illinois chartering the said company, and therefore "repugnant to the constitution of the United States.

"Second. The Supreme Court of the State of Illinois erred "in adjudging that the parcels of described in these proceed- "ings as the property of the Illinois Central Railroad Com- "pany and as parts of its right of way, were not protected "from the taxation in question by virtue of a valid contract "between the State of Illinois and the plaintiff in error, created "by the act of the General Assembly of said State approved "and in force February 10th 1851, entitled 'An act to incor- "porate the Illinois Central Railroad Company', and the ac- "ceptance thereof by said Company.

"Third. The Supreme Court of the State of Illinois erred in "adjudging that the parcels of land described in these proceed- "ings as parts of the right of way of the Illinois Central Railroad "Company were subject to special taxation for local improve- "ments under the constitution and laws of the State of Illinois, "notwithstanding the provision in the Company's charter that "the said corporation is hereby exempted from all taxation of "every kind except as herein provided". (Record 42).

BRIEF.

I. The terms of the contract between the State and the Railroad Company are explicit. Immunity from taxation was not granted to the Company; but a certain rate and method of taxation, in the nature of a commutation, was agreed upon, and the revenues thus accruing to the State were to be received in lieu of all other taxes. The words are: "*And the said corporation is hereby exempted from all taxation of every kind, except as herein provided for.*" The stipulation has all the elements of a legal contract. There is not only consent on the part of the State, but the consideration to be received by the State was largely in excess of the customary taxes, and therefore more than a fair equivalent for the exemption promised to the Company.

II. The constitutional power of the legislature to make the contract is undoubted. That was authoritatively settled by the Supreme Court of the State in 1855, and the decision was affirmed in 1863.

Ill. Cen. R. R. Co. v. *County of McLean*, 17 Ill., 291.

Neustadt v. *Ill. Cen. R. R. Co.*, 31 Ill., 484.

The following is an extract from the opinion in the case last cited: "The act to incorporate the Illinois Central Railroad "Company, of which the above section (the 22nd) is a part, "is a contract between the State and the Company, which "cannot be changed or annulled without the consent of both "contracting parties. In consideration of the undertaking of

"the Company to construct a great thoroughfare, which should "involve the expenditure of millions, and which was an ex- "periment, and seven per cent. of the gross amount of its re- "ceipts or income to be paid to the State, the Company was "relieved from the payment of all other than State taxes, to "be assessed as provided for in this section. The language "is plain and explicit, 'The said corporation is hereby ex- "empted from all taxation of every kind, except as herein pro- "vided for.' This being the contract between the State and "the corporation, no city or town authority can impose a tax "for municipal purposes on the property of that company "which may be within their limits."

As has been already stated, the contract was afterwards ratified by the people of the State, upon the revision of the constitution in 1870, and made irrevocable.

III. The taxes in question were assessed upon portions of the right of way of the Railroad Company, that is, upon component parts of the railroad itself, and pursuant to the provisions of a statute passed in 1872,—twenty-one years after the granting of the Company's charter. It is not pretended that they are taxes provided for in the charter. If not, how can they be enforced without a plain violation of the contract?

IV. The decision of the State Court did not proceed upon any denial of the binding force of the contract, but upon an interpretation of the contract, which, it is respectfully submitted, is manifestly contrary to its plain import, and upon certain assumptions, which, with due deference, we say are wholly gratuitous. The taxes in question, it is said, are *special* taxes, levied on contiguous property for a local improve-

ment, and cannot be regarded as burdens because the property charged is supposed to receive benefits from the improvement equal to the amount of the tax. It was therefore considered by the court, that this species of taxation "is not em- "braced within the meaning of an ordinary tax", and hence is not within the scope of the exemption clause in the Company's charter.

It is quite clear, however, that the power to levy such local taxes is referable to and can be sustained only as an exercise of the power of taxation inherent in the State. It matters not how they are called—whether we style them "ordinary" taxes or extraordinary, general or special—or whether they are levied for one public purpose or another; they are not the less *taxes;* and if they are taxes *not provided for in the charter*, it is respectfully submitted that they cannot be enforced without impairing the obligation of the contract.

The exemption guaranteed in the charter, is not an exemption from ordinary taxes only, but from "all taxation of *every* kind, except as herein provided for". There is this saving clause—"except as *herein provided for*",—and there is no other. These words necessarily exclude all other exceptions. The right to impose any other tax than those thus specially provided for is renounced and inhibited.

It is, no doubt, an established rule, that legislative contracts for exemption from taxation shall be construed with strictness, or, in other words, that they shall not be enlarged by construction. But this is a contract for commutation, based on full consideration, and it is accompanied by an express declaration, that the act which creates the contract "shall be favorably construed for all purposes therein expressed or declared, in all courts and places whatsoever".

It may well be doubted whether the rule of strict construc-

tion should be applied with the same severity to such a contract as to ordinary legislative grants.

Be that as it may, it is an inflexible rule in the construction of all statutes, both private and public, that the legislature must be understood to have intended what is plainly expressed. The same rule applies to the interpretation of contracts; and in this respect there is no difference between the contract of a State and the contract of a natural person.

Tennessee v. Whitworth, 117 U. S., 137.

It has been said by this Court in a case bearing some resemblance to the present: "It is true that legislative contracts are "to be construed most favorably to the State, if on a fair con- "sideration to be given the charter any reasonable doubts "arise as to their proper interpretation; but, as every contract "is to be construed to accomplish the intention of the parties "to it, if there is no ambiguity about it and this intention "clearly appears on reading the instrument, it is as much the "duty of the court to uphold and sustain it, as if it were a "contract between private persons."

Home of the Friendless v. Rouse, 8 Wall., 437.

A brief reference to a later decision, not less closely in point, will be equally pertinent. A bank charter granted by the legislature of Tennessee contained a provision, "that the said "company shall pay to the State an annual tax of one-half of one "per cent. on each share of the capital stock subscribed, which "shall be in lieu of all other taxes." Under color of a statute subsequently enacted, the State attempted to impose an additional tax on the stock in the hands of the individual shareholders. It was held, that the second tax was void, on the ground that the law authorizing it impaired the obligation of the contract in the company's charter. The court, speaking through Mr. Justice SWAYNE, who delivered the opinion, makes use of these expressions:

"This is one of those 'other taxes,' which it (the State) had "stipulated to forego. * * * There is no reservation or "discrimination as to any 'other tax.' All are alike included. "Such is the natural effect of the language used. The most "subtle casuistry to the contrary is unavailing. Under such a "contract between individuals, a doubt could not have existed. "It may as well be said the power is reserved to tax anything "else, as further to tax the shares. We cannot so hold, without "interpolating into the clause a term which it does not contain. "This we may not do. Our duty is to enforce the contract "as we find it, and not to make a new one. If it was intended "to make the exception claimed from the universality of the "exemption as expressed, it would have been easy to say so, "and it is fair to be presumed this would have been done. In "the absence of this expression, we can find no evidence of "such an intent."

Farrington v. *Tennessee*, 95 U. S., 688–9.

V. It is assumed in the opinion of the State Court, that the property of the plaintiff in error is not protected by the contract from "special assessments" for street improvements; and this is followed by the further assumption, that special taxes for street improvements are in all essential respects the same as "special assessments."

It has never been settled in Illinois, that special assessments can be levied upon the property of the plaintiff in error for local improvements. That question, as counsel are advised, has never been before the Supreme Court of that State; nor does it seem to be necessary to the decision of this case for the Court now to pass upon it. We do not propose, therefore, to discuss the proposition. We simply say it is a contro-

verted question, which it will be in order to consider when a case arises necessarily involving it.

The second proposition, that special taxes and special assessments are essentially the same under the laws of the State of Illinois, is demonstrably erroneous. It is conceded by the State Court in this case, that there are recognized differences. It will appear, we think, from a candid consideration of those differences, that they are radical and fundamental.

From an early period in the history of the State the corporate authorities of cities and villages have been invested with power to cause special assessments to be levied to defray the cost of street improvements. A few references to statutes conferring this authority and to the adjudications of the Supreme Court of the State on the subject, will be sufficient to illustrate the nature of these assessments.

By the first charter of the city of Chicago, approved March 4th 1837 (Laws of 1837, page 50), authority was given the common council (Sec. 40) to lay out and improve streets, and to cause the cost of the improvements "to be assessed upon "the real estate in any ward in said city deemed benefited by "said improvements, in proportion to the benefits resulting "thereto, as nearly as may be." Five reputable freeholders were to be chosen to make the assessment, who were required to be sworn "faithfully and impartially to execute their duty as such assessors according to the best of their ability." They were directed to give public notice to all persons interested of the time and place of their meeting for that purpose; and their duties were to "assess the amount directed by the "common council to be assessed for any such improvement, on "the real estate deemed by them to be benefited thereby, in "proportion to the benefit resulting thereto as nearly as may "be." When the assessment was completed, they were to publish a notice of the fact in the corporation newspaper, and

deliver a copy of the assessment roll to the city clerk. Any person interested could appeal to the common council for a correction of the assessment; and, in case of appeal, the council was required to appoint a time for hearing the parties, and to give public notice of the time, place and object of the hearing. The council had power to confirm the assessment, or to annul it and direct a new assessment to be made by the same assessors, or by five others to be appointed and sworn for the purpose.

On the revision of the city charter in 1851, the same provisions substantially were re-enacted,—the only material change being a reduction of the number of assessors from five "repu- "table freeholders" to three. (Act of February 14, 1851, Chap. 7. Sects. 2–7. Priv. Laws of 1851, page 155).

On a subsequent revision of the charter in 1863, a material change was made in the mode of levying assessments for street improvements. A board of public works was created, to consist of three commissioners, and it was made their duty when a street improvement was ordered by the common council, to make an assessment of the cost and expenses of doing the work on the lots or parcels of land fronting or abutting on the improvement. The act required that the assessment should be made "in such manner, as nearly as may be, that "each separate block, lot, sublot, piece or parcel of land on "either side of the street or part of street to be improved, "shall sustain the cost and expense of making or completing "the improvement upon that half of the street directly ad- "jacent to or in front of the same." (Act of February 13, 1863, Chap. 7, Sect. 21. Priv. Laws of 1863, page 89.)

The equitable requirement of the old law, that the assessment should be laid in the ratio of benefits, and be limited in amount to the estimated increase in value which the property charged would derive from the improvement, was abolished

by this act of 1863. The new law took no account of benefits or damages, but required the cost of the improvement to be assessed on the adjacent lots in proportion to frontage. The innovation was immediately attacked in the courts as unconstitutional.

The constitution of Illinois in force from 1848 to 1870, contained the following clause in relation to municipal taxation: "The corporate authorities of counties, townships, school districts, cities, towns and villages may be vested with power "to assess and collect taxes for corporate purposes; such taxes "to be uniform in respect to persons and property within the "jurisdiction of the body imposing the same." (Constitution of 1848, Art. IX, Sec. 5.)

Special assessments in proportion to benefits, had been sustained by the courts on the theory that they were not taxes, and therefore not within the purview of the provisions of the constitution limiting the exercise of the taxing power. Taxes, it was said, are burdens put upon persons or property for public uses. Assessments laid on real estate for a local improvement precisely in the ratio of the advantages accruing to the property, are not burdens, but only a compensation or equivalent for the increased value of the property derived from the improvement. They had, it was held, none of the distinctive features of a tax, and were not therefore within the operation of the constitutional provision above mentioned, which required that taxes levied for corporate purposes should be uniform in respect to persons and property within the jurisdiction of the body imposing the same.

Canal Trustees v. *Chicago*, 12 Ill., 403.
Peoria v. *Kidder*, 26 Ill., 351.

Assessments levied under the act of 1863 were not apportioned according to benefits, and the question whether they

could be discriminated from taxes, or reconciled in any way with the restrictions of the constitution, came before the Supreme Court for decision soon after the passage of the act. It was regarded by the court "as a very plain case," and the decision was against their validity.

City of Chicago v. *Larned*, 34 Ill., 203.

The question was elaborately discussed, and the case is one of the most celebrated in the judicial annals of the State.

It was contended in behalf of the city, that it was the established doctrine of the court that special assessments for local improvements were not taxes; that the true distinction between such assessments and taxes is to be found in the objects for which they are laid, and not in the manner of apportioning them among those who are to bear the burden; and that tried by this test the assessments in question were not taxes, and the power of the legislature over the subject was plenary.

On the other side it was insisted, that the previous decisions of the court gave no color to the idea, that a special assessment could be laid in any other mode than in the ratio of benefits; that, as this element was lacking in the assessments in question, they were in no way distinguishable from taxes; and that, being levied for corporate purposes, without regard to the principle of uniformity prescribed in the constitution, they must of necessity be pronounced invalid. If regarded as attempts to take money for public uses by the exercise of the right of eminent domain, they must be held equally invalid, because no provision was made for compensation to those whose money was taken.

In the opinion of the court by Mr. Justice Breese, the previous decisions on the subject are referred to *seriatim*, and the result of the examination is stated in these words: "All the "cases decided by this court, so far as we have examined, hold

"that these special assessments are not taxes, for the reason, "as plainly appears from the opinions delivered, that when laid "in the ratio of benefits they are not burdens. It is that ele- "ment which has reconciled the court to their imposition, and "induced the court to range the power to make them under "the power of eminent domain, the 'just compensation' being "the benefits flowing to the property holder from the improve- "ment, and which are required to be estimated together with "the damages. No case can be found decided by this court "on a principle variant from this, the equation of benefit and "burden forming the groundwork of them all."

"It is solely on this ground," say the Court further on in the opinion, "that such assessments have been sustained by this and "other courts. From the case of *Canal Trustees* v. *The City of* "*Chicago*, 12 Ill., 406, to the present time, the ruling principle of "all of them is, that as the assessments are in the ratio of advan- "tages or benefits, they are lawful; that they are an equivalent "for the increased value of the property derived from the im- "provement. * * * Take away the assessment of injuries "and benefits, then special assessments become the same thing "in substance as taxes."

The conclusion was, that if the assessment then in question was to be regarded as an exercise of the taxing power, it was in "flagrant" violation of the principles of equality and uniform- ity fixed in the constitution, and if referred to the power of eminent domain, it was equally invalid, because there was no *pretense* of "compensation being in any way provided for, or "even contemplated."

To the suggestion made in argument, that the common council, in and by the act of ordering the improvement, must be presumed to have determined that the benefits to the prop- erty assessed would be equal to the cost, the reply of the Court was: "The assessment of benefits and injuries is in the nature

" of a judicial proceeding and must be surrounded with some " sort of judicial sanction. Besides, the 'just compensation' " required by the constitution is a matter of substance and not " of form, which this whole proceeding utterly ignores."

There has been no decision of the Illinois Court at variance with the doctrine in *City of Chicago* v. *Larned*. On the contrary the rulings there made have been approved and followed in all the subsequent cases relating to the same subject. We mention only a few of them.

City of Ottawa v. *Spencer*, 40 Ill., 211.
City of Chicago v. *Baer*, 41 Ill., 306.
Wright v. *City of Chicago*, 46 Ill., 44.
St. John v. *East St. Louis*, 50 Ill., 92.

The decisions in the very cases referred to in the judgment of the State Court now under review, as establishing the doctrine that "exemption from taxation does not exempt from " special assessments," proceed upon the theory that special assessments are not taxes, because they are laid in proportion to benefits. Not one of them lends the faintest color to the idea that a special assessment can be anything but a tax, unless there has been an apportionment of benefits to the burden.

The same distinction between taxation and special assessment is also clearly made in the present constitution of Illinois.

Section 9 of Article IX of the constitution of 1870 reads as follows: "The general assembly may vest the corporate au- " thorities of cities, towns and villages with power to make local " improvements by *special assessment*, or by *special taxation* of " contiguous property, or otherwise. For all other corporate " purposes, all municipal corporations may be vested with " authority to assess and collect taxes; but such taxes shall be " uniform in respect to persons and property, within the juris- " diction of the body imposing the same."

And this distinction is carried into the act for the incorporation of cities and villages, by the authority of which the taxes now in question were assessed. Sections 1 and 2 of Article IX of that act provide as follows:

"Section 1. That the corporate authorities of cities and "villages are hereby vested with power to make local im- "provements by *special assessment* or by *special taxation*, or "both, of contiguous property, or general taxation, or other- "wise, as they shall by ordinance prescribe."

"Sec. 2. When any such city or village shall, by ordin- "ance, provide for the making of any local improvement, it "shall, by the same ordinance, prescribe whether the same "shall be made by *special assessment* or by *special taxation* of "contiguous property, or general taxation, or both."

In construing this statute, the Supreme Court of Illinois has said that the object of the legislature was to provide two modes for making local improvements,—one by special assessment, and the other by special taxation of contiguous property,—and to authorize the corporate authorities of cities and villages to determine by ordinance which mode should be adopted.

Enos v. *City of Springfield*, 113 Ill., 65.

The corporate authorities of the city of Decatur, for reasons satisfactory to themselves, determined to adopt in this case the method of special taxation. In the ordinance directing the improvement to be made, it was expressly provided that the cost should be defrayed "by the special taxation of the lots, "parts of lots and parcels of land abutting upon said street on "both sides thereof along the line of said improvement." (Record 4.)

The taxes were assessed as directed by the ordinance, and no inquiry was made in regard to benefits, or even contemplated. Indeed, it is thoroughly settled by the decisions of the

Supreme Court of Illinois that no such inquiry is necessary, or even permissible.

White v. *The People ex rel.*, 94 Ill. 604.
Enos v. *City of Springfield*, 113 Ill. 65.
City of Galesburg v. *Searles*, 114 Ill. 217.
City of Sterling v. *Gault*, 117 Ill. 11.
City of Springfield v. *Green*, 120 Ill. 269.

In *White* v. *The People*, *supra*, the Court say: "Whether "or not the special tax exceeds the actual benefit to the lot is "not material. It may be supposed to be based on a presumed "equivalent. The city council have determined the frontage "to be the proper measure of probable benefits. That is "generally considered as a very reasonable measure of bene- "fits in the case of such an improvement, and if it does not in "fact, in the present case, represent the actual benefits, it is "enough that the city council have deemed it the proper rule "to apply. * * * The objection that the special tax here "exceeds the benefits to the lot, implies that the only mode of "making the improvement is by special assessment; whereas "the broad power is given, under the constitution, to make it "either by special assessment, or by special taxation of con- "tiguous property, or otherwise. The objection leaves out of "view and treats as meaningless and of no avail, the words "'by special taxation of contiguous property' and 'or other- "wise,' which have with special care been inserted in the con- "stitution of 1870. It also disregards that there is no require- "ment of uniformity of taxation for local improvements, while "there is for other corporate purposes. This proceeding is in "the special taxation of contiguous property; and in the "adoption of that mode there is no requirement of benefits "received, and no respect thereto, further than may be had by "the city council in determining upon which particular one of "the several modes of special taxation of contiguous property

"open to them, shall be resorted to. * * * After the "interpretation of the constitution of 1848 in the *Larned* case, "the constitution was radically changed in the particular here "involved, for the very purpose, we may suppose, of avoiding "inconveniences which had been found to result from that "decision."

In *Enos* v. *City of Springfield*, *supra*, objection was made to a special tax levied for a street improvement, because, in accordance with the terms of the ordinance, it had been assessed upon the lots abutting upon the street in proportion to frontage. With reference to this point the Court say: "The "constitution and the section of the statute are silent on the "point as to manner of the assessment,—whether it shall be in "proportion to the frontage of the lot, or otherwise. But "power is conferred on the city to make the assessment, and "it is a matter within the discretion of the corporate authori- "ties to determine for themselves, and any mode they may "adopt to carry out the power conferred will be sustained, so "long as they do not violate the constitution or the statute."

In *City of Galesburg* v. *Searles*, *supra*, it is said: "The "notion seems to be advanced by counsel that special taxation "implies the idea of special benefit, and that there can be no "special taxation of property unless, and according as, it may "be specially benefited. *There is no countenance for this.* The "power of special taxation is given unqualifiedly, with no re- "striction whatsoever as to the benefiting contiguous property. "The supposition that contiguous property would be benefited "by a local improvement, may have operated with those who "granted the power of special taxation of such property, in the "granting of the power, but they left the exercise of the power "without condition in this respect."

In *City of Sterling* v. *Galt*, *supra*, the Court say: "When "the cost of a local improvement is to be raised in whole or in

"part by *special taxation*, the ordinance itself must either state "the sum or give the *data* by which the commissioners can fix "the amount to be thus raised, and when so fixed or ascer- "tained, in conformity with the ordinance, it is conclusive on "the property owner. In such case the municipal authorities, "by ordinance, practically fix and determine in advance the "amount the property specially benefited is to pay, and the "amount when thus fixed is not open to review. This being "done, all the commissioners have to do is to so assess the "property benefited as to raise the required sum. This assess- "ment must be made according to the scheme which has been "adopted. Sometimes it is done on the frontage principle; in "other cases the value of the property is made the basis of the "apportionment or assessment. It is lawful to adopt either of "these modes. In cases of special taxation, the municipal "authorities, if they think proper, may impose the whole of the "burden upon the contiguous property, and although, theoret- "ically, this is permitted upon the hypothesis that the benefits "will be equal to the burden cast upon the property, yet "whether it be so or not cannot be enquired into. * * * "A special assessment differs from special taxation mainly in "this, that the assessment cannot, in any case or under any "circumstances, exceed the benefits the property will derive "from the improvement, and the owner of the property assessed "has the right, if dissatisfied with the assessment, to have this "question passed upon by a jury, and if not content with their "finding, to have it reviewed in an appellate tribunal, whereas "in cases of special taxation the jury have nothing to do with "the amount which is by ordinance assessed upon the contig- "uous property."

In *City of Springfield* v. *Green*, *supra*, objection was made to a special tax for a street improvement assessed upon lots abutting upon the street in proportion to frontage, on the

ground that the assessment was in violation of, if not the letter, at least the spirit, of the constitution, and consequently void. Upon this point the Court say: "That this objection would "have been good under the constitution of 1848, is not denied. "(*City of Chicago* v. *Larned*, 34 Ill., 203). But that the re- "verse of this is now the rule, where the cost of the improve- "ment is to be raised by special taxation, is conclusively shown "by the following authorities: *White* v. *The People, ex rel.*, "94 Ill., 604; *Craw* v. *Tolono*, 96 id., 255; *Bigelow* v. *Chi-* "*cago*, 90 id., 53; *Fagin* v. *Chicago*, 84 id., 234; *Enos* v. "*Springfield*, 113 id., 65; *Galesburg* v. *Searles*, 114 id., 217. "*Watson* v. *Chicago*, 115 id., 78; *City of Sterling* v. *Gult et al.*, "117 id., 15. The change in the ruling upon this question is "based, primarily, upon the difference between the present "constitution and the constitution of 1848, and also, in part, "upon the construction which has been placed upon our present "statute relating to local improvements by municipal corpora- "tions. The construction in question recognizes a distinction "between a special assessment and special taxation, in respect "to the right of the owners of the property assessed to have "the question of benefits passed upon by a jury. In the form- "er case such right is held to be given by the statute, while in "the latter it is denied. * * * If it be possible to settle "any question by repeated decisions, all the same way, the "present surely ought to be regarded as finally and irrevocably "settled."

These references will suffice to show the nature of the assessments attempted to be levied in this case upon the property of the plaintiff in error. They are plainly *taxes*. They admit of no other classification. They have been levied without reference to any actual benefits which the property taxed will derive from the proposed improvement, and therefore lack the essential and indispensable element which distinguishes a

"special assessment" from a tax, as those terms are understood in the laws of Illinois.

To say that the imposition of such taxes is not taxation, is simply a contradiction in terms. The constitution of the State calls it taxation. The statute under which this proceeding is prosecuted calls it taxation. The Supreme Court of Illinois, in numerous decisions, calls it the same; and the opinion of the same court in the present case admits it to be a *kind* of taxation, which is conceded not to be provided for in the Railroad Company's charter.

But the decision of the State Court in this case is put upon the following grounds:

1. That it has been held by the court in many cases, "that exemption from taxation does not exempt from special assessments."

2. That, therefore, if the improvement in the present case had been made by special assessment, the property of the plaintiff in error would not be relieved by the exemption in its charter, from its just proportion of the burden of such assessment.

3. That in special taxation, as well as in special assessment, the property charged is supposed to receive such benefits from the improvement as will be an equivalent for the amount of the tax.

4. That, therefore, there is no such difference between special assessment and special taxation of contiguous property, that the general word "taxation" should be held to include the latter and not the former.

5. That there would be no justice in compelling the other property owners to bear the whole expense of an improvement, which confers as great an increase of value proportionately upon the Company's property, as upon theirs.

From these propositions is deduced the conclusion, that the "right of way" of the plaintiff in error is not exempt by reason of the provision in its charter from a special tax assessed against it.

The first criticism suggested by this reasoning is, that the second proposition is not a logical sequence from the premises stated in the first. It by no means follows from the fact, that the court has decided in many cases "that exemption from "taxation does not exempt from special assessments", that the property of the plaintiff in error would not be relieved from assessment, by the exemption in its charter, if the improvement had been made by special assessment. The same court has also decided, that exemption from taxation does in some cases relieve from special assessments,—as for instance, in the case of assessments levied on public property belonging to the State or General Government, or lands granted and held for the benefit of schools.

The People ex rel. v. *Little*, 118 Ill., 52.
Fagan v. *City of Chicago*, 84 Ill., 227.
Taylor v. *The People*, 66 Ill., 322.

The cases cited in the opinion as sustaining the first proposition, did not involve the same question as would arise in a proceeding against the property of the plaintiff in error, nor any question very closely analogous. They certainly did not involve a construction of the contract contained in the Company's charter. Whether an exemption from taxation carries with it an exemption from special assessment, is a question that cannot be answered when put in that general form. It will depend upon the terms of the law or the contract relied upon in each particular case.

To guard against any possible misapprehension, it may here properly be stated, that every one of the cases in the State

Court having any bearing upon the point suggested in the first of the foregoing propositions, was decided since the date of the Company's charter. There was no antecedent decision of the Court which serves to control in any way the terms of the contract.

But suppose it to be true, that the property upon which the taxes in question have been assessed is subject to "special "assessment", notwithstanding the exemption contained in the Company's charter: What is that to the purpose? The assessment could not in any case exceed the benefits the property would derive from the improvement; and the Company would have the right, if dissatisfied with the apportionment made by the commissioners, to have the question of benefits passed upon by a jury. The taxes in question appear by the assessment roll to have been assessed upon the property on each side of the street, in proportion to *frontage*. (Record 11.) It is not pretended that that there has been any "apportionment of benefits to the burden". How, then, can the Court say, that the property assessed would have been subject to *these* taxes, even upon the hypothesis that it was subject to special assessment?

In the third and fourth propositions advanced by the State Court, the extraordinary position is taken, that there is no substantial difference between a special tax and a "special assessment". This is not only in flat contradiction to the doctrine of the Illinois Court in the *Larned* case and the uniform tenor of all the subsequent decisions, but it is utterly irreconcilable with the provisions of the State constitution and statute governing proceedings like the present. The fact is, the only resemblance between the two methods of procedure consists in the object for which the money is raised. In all other respects they are radically different. The theory, that in special taxation, as well as in special assessment, the property charged is supposed to

receive such benefits from the improvement as will be an equivalent for the amount of the tax, is wholly illusory. How can you know that the property charged in this case will be benefited to the amount of the tax? It consists of portions of the "right of way", which are occupied by railroad tracks, and can be used for no other purpose. The street to be improved crosses the railroad nearly at a right angle (see plat and stipulation, Record 30, 31); and there is absolutely nothing in the record to show, apart from the mere passage of the ordinance, that the property charged will derive a particle of benefit from the proposed improvement.

In several well-considered cases in other jurisdictions, where assessments on property specially benefited have been authorized by statute for a street improvement, it has been held as matter of law, that the roadbed or "right of way" of a railroad company derives no special benefit from the paving of a street which crosses it, and for that reason is not subject to assessment.

City of Philadelphia v. Railroad Co., 33 Pa. St., 41.

Railroad Co. v. City of Philadelphia, 88 Pa. St., 424.

City of Allegheny v. Western Penn Co., 21 Atlantic Rep., 763.

New York & N. H. R. R. Co. v. City of New Haven, 42 Conn., 279.

New Jersey R. R. & T. Co. v. City of Elizabeth, 37 N. J. Law, 330.

This ruling is put upon the reasonable ground, that the special benefit which warrants an assessment, must be one that enhances the present market value of the property; and it is apparent, from the very nature of the case, that no such benefit from the improvement can accrue to the strip of ground

occupied by the tracks and sidings of a railroad company, which can neither be sold nor applied to other uses.

It certainly requires no argument to show, that, without *some proof* tending to establish the fact, there can be no rational presumption that property of that kind will be sensibly increased in value by the paving of a street which crosses it. With still less reason can it be presumed, in the like absence of evidence on the subject, that the paving will confer "as great an increase of value proportionately" on that kind of property, as upon residence or business lots which can be improved or sold at the pleasure of the owner.

As to the justice of compelling other property owners to bear the whole expense of the improvement,—that, it is respectfully submitted, is a consideration which can have no legitimate bearing upon the question to be decided in this case. The only question here is, whether the tax which has been assessed upon the property of the plaintiff in error, is or not in violation of a valid contract. If it is, it cannot be just to enforce the tax. There is no injustice in requiring the State, as well as private persons, to respect the obligation of contracts.

VI. There is no warrant for the assumption that special taxes assessed under the constitution and laws of Illinois are not burdens. Whether the property on which they are imposed is specially benefited or not, is held to be a wholly immaterial question. They differ, therefore, from other taxes only in the purpose for which they are levied. Is there anything in this distinguishing feature of the tax, which will enable the State or its agencies to evade the plain language of the contract: "And the said corporation is hereby exempted from all taxation of *every* kind, except as herein provided for"?

General expressions are to be found in text-books, and we occasionally meet with *dicta* in the decisions of highly respectable courts, to the effect that a general exemption from taxation will not extend to special assessments for local improvements. But it will be readily seen, that no general rule of this character can be applied indiscriminately in the construction of statutes containing such exemptions. Each case will depend upon upon its own special facts. The object, and the only object, of judicial inquiry in construing statutes, is to ascertain the *intention of the legislature* which framed the statute; and that intention is to be collected from "the words, the context, the subject-matter, the effects and consequences, or the spirit and reason of the law."

Many of the reported cases, relate to exemptions found in a tax law for the raising of revenue for general purposes; and it has been properly held that an exemption clause in such a law, expressed in general terms, has reference, like all the other provisions of the act, only to taxes of a general public character. No different conclusion could be reached without violating one of the most familiar rules of statutory construction.

There is another class of cases in which a distinction has been made between ordinary taxation in the usual mode for general purposes, and special assessments for local improvements apportioned upon property specially benefited in proportion to, and not in excess of, the special benefits received. It has been held in some jurisdictions, that the latter are not burdens, and therefore not taxes, within the meaning of that word as sometimes used in a State constitution or statute. But these cases afford no sanction to the anomalous proposition, that taxes assessed arbitrarily on property without regard to special benefits, do not constitute taxation.

There is perhaps no case, which better illustrates the posi-

tion we take on this point than that of *McGee* v. *Mathis*, 4 Wall., 143.

It appeared in that case that the State of Arkansas, in order to promote the drainage and sale of certain swamp and overflowed lands which it owned, had passed an act, by way of encouraging purchasers, containing the provision, that "all said swamp and overflowed lands shall be exempt from taxation for the term of ten years, or until they shall be reclaimed." The act provided for the issue of transferable scrip, receivable at any time in payment for lands not already taken up. After the issue of a large amount of the scrip, but before it had been applied in making purchases, the section in the act relatting to exemption from taxation was repealed, and provision made by law for the taxation of swamp and overflowed lands, sold or to be sold, precisely as other lands. After the repeal, the holder of the scrip previously issued purchased with it some of the land for which it was receivable in payment; and subsequently another act, local in its nature, was passed, providing for the making of levees and drains in the county where the land was situated, which authorized a special tax to meet the cost. A special tax for that purpose having been afterwards assessed upon the land so purchased, but before the term of exemption had expired, the purchaser filed his bill in the proper State court to restrain the collection of the tax. The Supreme Court of Arkansas sustained the validity of the tax; but, as the case involved the question whether the tax was in violation of a contract between the State and the complainant, it was brought to this Court for final review.

It was here strenuously argued that the exemption provided for in the repealed statute must be construed to apply only to the ordinary State and county taxes, and should not be held to embrace special or local assessments, where the fund raised is expended for the improvement of the property taxed. Many

authorities were cited in support of this view. But the contention met with no favor from the Court. Speaking through Mr. Chief Justice Chase, the Court say, "The argument "would have great force, if the provision for exemption had "been contained in a general tax law, or in a law in framing "which the legislature might reasonably be supposed to have "in view general taxation only. But the provision under con- "sideration is found in a law providing for the construction of "levees and drains, and devoting to that object funds supposed "to be more than adequate, derived from the very lands ex- "empted, and the exemption is for ten years, or until re- "claimed, and is offered as an inducement to take up the "lands." The special tax was held to be a clear infraction of the contract, because, on looking into the act and comparing all parts of it together, it was found impossible to say that the general word "taxation" in the exemption clause was intended by the legislature to embrace only the ordinary State and county taxes.

For a further elucidation of the subject we invite the Court's attention to the following additional authorities:

Harvard College v. *Aldermen of Boston*, 104 Mass., 470.

Brightman v. *Kirner*, 22 Wis., 54.

Southern Railroad Company v. *Mayor of Jackson*, 38 Miss., 334.

State v. *City of Newark*, 27 N. J. Law, 185.

City of Erie v. *First Universalist Church*, 105 Pa. St., 278.

Olive Cemetery Co. v. *City of Philadelphia*, 93 Pa. St., 129.

City of Richmond v. *Richmond and Danville R. R. Co.*, 21 Grat., 604.

While we do not presume to deny, that the words "taxes" and "taxation" may be used in a contract or in a statute in a sense which would not include a special assessment, or even a special tax, for a street improvement, yet the same principles of interpretation are to be observed in determining that question, as in other cases of judicial construction. The meaning may be controlled by the context or the subject-matter; but in ascertaining that meaning, judges act as interpreters, not as reformers of contracts or law-makers.

It is to be observed with reference to the exemption now in question, that it is found, not in a general revenue law for the assessment of the ordinary public taxes, but in a charter, which, unlike ordinary acts of incorporation, is, in the strictest and narrowest sense, a contract between the State and the Railroad Company. The most cursory examination will show that the charter must have been the outcome of much previous negotiation and conference. It contains many provisions of an unusual and highly important character, relating to various subjects of special interest to the State, which could have been settled only by mutual concession and compromise. A work of great public importance was provided for, which the resources of the State were not then equal to, but to the completion of which it was about to become committed by a formal acceptance of the Act of Congress referred to in the 15th section of the charter. That act required the road to be completed within ten years from the date of its passage (September 20th, 1850); and on the 17th of February 1851 ~~ten~~ eleven days after the approval of the charter—the act was accepted by the General Assembly, and all the conditions thereof "agreed to and made obligatory upon the State of Illinois." (Laws of 1851, pp. 192–3.)

The legislature also wished to provide for a large permanent revenue, to aid in paying the interest-bearing State

indebtedness. It was therefore required (Sections 18 and 22), that seven per centum of the gross earnings of the Company should be paid semi-annually into the State treasury; and this fund was specifically appropriated to that special object. In consideration of this extraordinary charge, which was made (Section 24) a lien upon the road and all its appurtenances, and, it must be presumed, as an inducement to the corporators to yield their assent to it, it was agreed that the Company should be relieved from all other forms and modes of taxation. We again call the attention of the Court to the words of the engagement: "*And the said corporation is hereby exempted from all taxation of every kind, except as herein provided for.*" They are as broad as language can make them, and the closest scrutiny will discover nothing in the other provisions of the charter, from which it can be properly inferred that they were used in any other than their broadest signification. No suggestion is made in the judgment of the State Court, that there is any indication in the other provisions of the charter, that the words of the exemption clause were not intended to mean what they naturally import. The decision of that court proceeds wholly upon the assumption, that the property of the Company is subject to special assessments laid in proportion to benefits, and the untenable theory that special taxes are in all essential respects the same as special assessments, and therefore, not burdens, but only "an equivalent or compensation for the enhanced value which the property assessed has derived from the improvement."

The principle of strict construction has not often been carried so far, as to prevent a court from giving effect to the intent of the legislature when distinctly expressed in a legislative contract. The covenant of the State in this case was made advisedly; and we respectfully submit that neither the State

nor its subordinate municipal agencies should be permitted to go outside of the contract, into regions of mere conjecture, to find reasons for evading it. The exemption promised to the Company was understood at the time to be something substantial; but if the judgment of the Illinois Court is permitted to stand, and the Company's property is left subject to special taxation in every city and village along the seven hundred miles of its railway, the promise becomes a trick or a jest. So long as the Company fulfills its engagements with the State, due regard for justice and honesty requires that it should be treated in good faith.

BENJAMIN F. AYER,
Of Counsel for Plaintiff in Error.

APPENDIX.

I.

ACT OF CONGRESS GRANTING LAND TO THE STATE OF ILLINOIS FOR RAILROAD CONSTRUCTION.

Approved September 20, 1850.

AN ACT granting the right of way, and making a grant of land to the States of Illinois, Mississippi and Alabama, in aid of the construction of a railroad from Chicago to Mobile. (Approved 20th September, 1850.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the right of way through the public lands be, and the same is hereby, granted to the State of Illinois, for the construction of a railroad from the Southern terminus of the Illinois and Michigan Canal to a point at or near the junction of the Ohio and Mississippi Rivers, with a branch of the same to Chicago, on Lake Michigan, and another via the town of Galena in said State, to Dubuque in the State of Iowa, with the right also to take necessary materials of earth, stones, timber, etc., for the construction thereof: *Provided*, That the right of way shall not exceed one hundred feet on each side of the length thereof, and a copy of the survey of said road and branches, made uunder the direction of the legislature, shall be forwarded to the proper local land offices respectively, and to the general land office at Washington city, within ninety days after the completion of the same.

SEC. 2. *And be it further enacted*, That there be, and is hereby, granted to the State of Illinois, for the purpose of aiding in making the railroad and branches aforesaid, every alternate section of land designated by even numbers, for six sections in width on each side of said road and branches; but in case it shall appear that the United States have, when the line or route of said road and branches is definitely fixed by the authority aforesaid, sold any part of any section hereby granted,

or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the governor of said State, to select, subject to the approval aforesaid, from the lands of the United States most contiguous to the tier of sections above specified, so much land in alternate sections, or parts of sections, as shall be equal to such lands as the United States have sold, or to which the right of pre-emption has attached as aforesaid, which lands, being equal in quantity to one-half of six sections in width on each side of said road and branches, the State of Illinois shall have and hold to and for the use and purpose aforesaid: *Provided*, That the lands to be so located shall in no case be further than fifteen miles from the line of the road: *And further provided*, The construction of said road shall be commenced at its southern terminus, at or near the junction of the Ohio and Mississippi rivers, and its northern terminus upon the Illinois and Michigan Canal simultaneously, and continued from each of said points until completed, when said branch roads shall be constructed according to the survey and location thereof: *Provided further*, That the lands hereby granted shall be applied in the construction of said road and branches respectively, in quantities corresponding with the grant for each, and shall be disposed of only as the work progresses, and shall be applied to no other purpose whatsoever: *And provided further*, That any and all lands reserved to the United States by the Act entitled "An Act to grant a quantity of land to the State of Illinois, for the purpose of aiding in opening a canal to connect the waters of the Illinois river with those of Lake Michigan, approved March second, eighteen hundred and twenty-seven," be, and the same are hereby, reserved to the United States from the operations of this Act.

SEC. 3. *And be it further enacted*, That the sections and parts of sections of land which, by such grant, shall remain to the United States, within six miles on each side of said road and branches, shall not be sold for less than double the minimum price of the public lands when sold.

SEC. 4. *And be it further enacted*, That the said lands hereby granted to the said State shall be subject to the disposal of the Legislature thereof, for the purposes aforesaid and no other; and the said railroad and branches shall be and remain a public highway, for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States.

SEC. 5. *And be it further enacted*, That if the said railroad shall not be completed within ten years, the said State of Illinois shall be bound to pay to the United States the amount which may be received upon the sale of any part of said lands by said State, the title to the purchasers under said State remaining valid; and the title to the residue of said lands shall reinvest in the United States, to have and hold the same in the same manner as if this Act had not been passed.

SEC. 6. *And be it further enacted*, That the United States Mail shall at all times be transported on the said railroad under the direction of the Post Office Department, at such price as the Congress may by law direct.

SEC. 7. *And be it further enacted*, That in order to aid in the continuation of said Central Railroad from the mouth of the Ohio River to the city of Mobile, all the rights, privileges and liabilities hereinbefore conferred on the State of Illinois shall be granted to the States of Alabama and Mississippi respectively, for the purpose of aiding in the construction of a railroad from said city of Mobile to a point near the mouth of the Ohio River, and that public lands of the United States to the same extent in proportion to the length of the road, on the same terms, limitations and restrictions in every respect, shall be, and is hereby granted to said States of Alabama and Mississippi, respectively. (9 U. S. Stat. at Large, 466.)

II.

AN ACT TO INCORPORATE THE ILLINOIS CENTRAL RAILROAD COMPANY.

Approved 10th February, 1851.

WHEREAS, in the judgment of this General Assembly, the object of incorporating the CENTRAL RAILROAD COMPANY cannot be attained under general laws: Therefore,

SECTION 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly*, That Robert Schuyler, George Griswold, Gouverneur Morris, Franklin Haven, David A. Neal, Robert Rantoul Junior, Jonathan Sturges, George

W. Ludlow, John F. A. Sanford, Henry Grinnell, William H. Aspinwall, Leroy Wiley, and Joseph W. Alsop, and all such persons as shall hereafter become stockholders in the company hereby incorporated, shall be a body politic and corporate by the name and style of the "ILLINOIS CENTRAL RAILROAD COMPANY;" and under that name and style, shall be capable of suing and being sued, impleading and being impleaded, defending and being defended against, in law and equity, in all courts and places whatsoever, in like manner and as fully as natural persons; may make and use a common seal, and alter or renew the same at pleasure; and by their said corporate name and style, shall be capable, in law, of contracting and being contracted with, shall be and are hereby invested with all the powers, privileges, immunities and franchises, and of acquiring by purchase or otherwise, and of holding and conveying real and personal estate, which may be needful to carry into effect fully the purposes and objects of this Act.

SEC. 2. The said corporation is hereby authorized and empowered to survey, locate, construct, complete, alter, maintain and operate a railroad with one or more tracks or lines of rails, from the southern terminus of the Illinois and Michigan Canal, to a point at the city of Cairo, with a branch of the same to the city of Chicago, on Lake Michigan; and also a branch, via the city of Galena, to a point on the Mississippi River, opposite the town of Dubuque, in the State of Iowa.

SEC. 3. The said corporation shall have the right of way upon, and may appropriate to its sole use and control, for the purposes contemplated herein, land not exceeding two hundred feet in width through its entire length; may enter upon and take possession of, and use all and singular any lands, streams and materials of every kind, for the location of depots and stopping stages, for the purpose of constructing bridges, dams, embankments, excavations, station grounds, spoil banks, turnouts, engine houses, shops and other buildings necessary for the construction, completing, altering, maintaining, preserving and complete operation of said road. All such lands, waters, materials nnd privileges belonging to the State, are hereby granted to said corporation for said purposes; but when owned or belonging to any person, company or corporation, and can not be obtained by voluntary grant or release, the same may be taken and paid for, if any damages are awarded, in the manner provided in "An Act to provide for a general

system of Railroad Incorporations," approved November 5th, 1849: and the final decision or award shall vest in the corporation hereby created, all the rights, franchises and immunities, in said Act contemplated and provided: *Provided*, That the appeal allowed by the provisions of the aforesaid Act, approved the 5th of November, 1849, shall not affect the possession, by said company, of the land appraised, and when the appeal is made by others than the company, the same shall not be allowed, except on a stipulation of the party appealing that the said company may enter upon and use the lands described in the petition, for the uses and purposes in said petition set forth, upon said company giving bond and security, to be approved by the Clerk of said Court, that they will pay all costs and damages that may be awarded against said company on the hearing of said appeal: *Provided*, That nothing in this section contained shall be so construed as to authorize the said corporation to interrupt the navigation of said streams.

SEC. 4. The capital stock of said corporation shall be one million of dollars, which may be increased, from time to time, to any sum not exceeding the entire amount expended on account of said road, divided into shares of one hundred dollars each, which shall be deemed personal property, and may be issued and transferred in such manner and at such places as may be ordered and provided by the board of directors, who shall have power to require the payment of sums subscribed by stockholders, in such manner and on such terms as they may deem proper; and on refusal or neglect, on the part of stockholders, or any of them, to make payment, on the requisition of the board of directors, the shares of such delinquents may, after thirty days' public notice, be sold at public auction, under such rules as said board of directors may adopt—the surplus money, if any remains, after deducting the payments due, with the interest and the necessary costs of sale, to be paid to such delinquent stockholders. The board of directors hereby appointed shall cause books to be opened for subscriptions to said stock, in such manner and at such time and places as they shall direct.

SEC. 5. All the corporate powers of said company shall be vested in and be exercised by a board of directors, and such officers and agents as they shall appoint. The board of directors shall consist of not less than twelve stockholders—

three of whom shall be chosen every year by the stockholders —each share having one vote, to be given in person or by proxy—and the Governor of the State of Illinois, who shall be a director, *ex-officio*, perpetually, voting in person or by proxy; each director successively elected to continue in office until his successor is elected and qualified. Vacancies in the board may be filled by a vote of two-thirds of the directors remaining; such appointees to continue in office until the next regular election of directors; but no person shall be so elected who shall not have been openly nominated at a meeting of the directors, at least one week before the time appointed for such election. Other officers, agents and servants, whether members of the board, or otherwise, may be appointed, employed, paid and dismissed, under such rules and regulations as the board of directors may, from time to time, adopt.

SEC. 6. The following named persons shall constitute the first board of directors, to wit: Robert Schuyler, George Griswold, Gouverneur Morris, Franklin Haven, David A. Neal, Robert Rantoul, Jr., Jonathan Sturges, George W. Ludlow, John F. A. Sandford, Henry Grinnell, Joseph W. Alsop, Leroy Wiley, with the Governor of the State of Illinois, for the time being, whose powers shall commence and be in full force from and after the day this Act shall be accepted, in the manner herein provided.

SEC. 7. The president and directors, for the time being, are hereby authorized and empowered, by themselves, their officers or agents, to execute all the powers herein granted, for the purpose of surveying, locating, constructing, completing, altering, maintaining and operating said road and branches; and for the transportation upon the same of persons, goods, wares and merchandise, with all such powers and authority of control and management of the affairs of said company, as may be necessary and proper to carry into full and complete effect the meaning and intent of this Act.

SEC. 8. The said company shall have power to make, ordain and establish all such by-laws, rules and regulations as may be deemed expedient and necessary to fulfill the purposes and carry into effect the provisions of this Act, and for the well ordering, regulating and securing the affairs, business and interests of the company: *Provided*, That the same be not repugnant to the constitution and laws of the United States, or of this State, or repugnant to this Act. The

board of directors shall have power to establish such rates of toll for the conveyance of persons and property upon the same as they shall, from time to time, by their by-laws, direct and determine, and to levy and collect the same for the use of the said company. The transportation of persons and property; the width of track; the construction of wheels; the form and size of cars; the weight of loads; and all other matters and things respecting the use of said road, and the conveyance of passengers and property shall be in conformity to such rules and regulations as said board of directors shall from time to time determine. Nothing in this Act contained shall authorize said corporation to make a location of their track within any city without the consent of the common council of said city.

SEC. 9. If any person shall carelessly, wilfully, maliciously, or wantonly delay, hinder, or obstruct the passage of any carriage on said road or branches, or shall place, or cause to be placed, any material thereon, or in any way trespass upon, spoil, injure or destroy said road or branches, or any part thereof, or anything belonging or pertaining thereto, or employed or used in connection with its location, survey, construction or management, all persons committing or aiding and abetting in the commission of such trespass or offense, shall forfeit and pay to the said company treble such damages as shall be proved before any court of competent jurisdiction; and further, such offenders shall be liable to indictment in the county within whose jurisdiction the offense may be committed, and to pay a fine of not less than thirty, nor more than one hundred dollars, to the use of the people of the State of Illinois, or may be imprisoned in the penitentiary for a term not exceeding five years, in the discretion of the court before whom the same shall be tried.

SEC. 10. Said corporation may construct their said road and branches over or across any stream of water, water-course, road, highway, railroad or canal which the route of its road shall intersect, but the corporation shall restore the stream or water-course, road or highway, thus intersected, to its former state, or in a sufficient manner not to have impaired its usefulness. Whenever the track of said railroad shall cross a road or highway, such road or highway may be carried under or over said track, as may be found most expedient; and in case where an embankment or cutting shall make a change in the line of such road or highway desirable, with a view to a

more easy ascent or descent, the said company may take such additional lands for the construction of such roads or highway as may be deemed requisite by said corporation, unless the lands so taken shall be purchased or voluntarily given for the purposes aforesaid. Compensation therefor shall be ascertained in the manner in this Act provided, as nearly as may be, and duly made by said corporation to the owners and persons interested in such lands. The same when so taken or compensation made, to become a part of such intersecting road or highway, in such manner and by such tenure as the adjacent parts of the same highway may be held for highway purposes.

SEC. 11. And when the route of the said road, or either of its branches, as provided in this act, shall intersect, cross or connect with, or run along or upon the line of any other railroad now constructing, or now in process of construction by any other company, the company to be formed under this act shall join with such other company in making all necessary turnouts, sidelings and switches, and other conveniences necessary to further the objects of such connection; and when the route of any other company shall be occupied as aforesaid, just compensation shall be made to such other company for all expenditures made by them, in the location of such road; and all railroads so constructed, or now in process of construction, intersected as aforesaid, and connections made with the roads authorized to be built by this Act, shall be made, and facilities in the transhipment of freight and passengers, and interchange of cars afforded by each, over the respective roads, upon fair and equitable terms, and in case the said companies cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossings and connections, the transhipment of freight and passengers, and interchange of cars, the same shall be ascertained and determined by three commissioners, one to be chosen by each of said companies, and the two so chosen to choose a third, and in case they cannot agree upon the choice of a third person, he shall be appointed by the Judge of the District Court of the United States for the District of Illinois, and the decision of the three, when so chosen, shall be final: *Provided*, That this corporation shall not take and run on the road or line of any such company which is now being constructed without the consent and agreement of the company whose road or line is proposed so to be used.

SEC. 12. Every conductor, baggage master, engineer, brakeman, or other servant of said corporation employed in a passenger train, or at stations for passengers, shall wear upon his hat or cap a badge which shall indicate his office, the initial letters or style of the corporation. No conductor or collector, without such badge, shall demand or be entitled to receive from any passenger any fare, toll or ticket, or exercise any of the powers of his office, and no other of said officers, or servants, without such badge, shall have any authority to meddle or interfere with any passenger, his baggage or property. In forming passenger trains, baggage, or freight, or merchandise, or lumber cars, shall not be placed in rear of passenger cars; and if they, or any of them, shall be so placed, and any accident shall happen to life or limb, the officer or agent who so directed or knowingly suffered such arrangement, and the conductor or engineer of the train, shall each and all be held guilty of a misdemeanor, and be punished accordingly.

SEC. 13. A bell of at least thirty pounds weight, or a steam whistle, shall be placed on each locomotive engine, and shall be rung or whistled at the distance of at least eighty rods from the place where the said road shall cross any other road or street, and be kept ringing or whistling at intervals until it shall have crossed said road or street, under a penalty of fifty dollars for every neglect, to be paid by said corporation, one-half thereof to go to the informer, and the other half to the State, and to be liable for all damages which shall be sustained by any person by reason of such neglect. Said corporation shall cause boards to be placed, well supported by posts or otherwise, and constantly maintained across each public road or street, where the same is crossed by the Railroad, on such elevation as not to obstruct the travel, and to be easily seen by travelers, and on each side of said board shall be painted in capital letters, of at least the size of nine inches each, the words "*Railroad Crossing! Look out for the Cars.*" But this provision shall not apply to streets, or cities, or villages, unless the corporation be required to put up such boards by the officers having charge of such streets.

SEC. 14. Said corporation shall, within a reasonable time after said road and branches shall have been located, cause to be made a map and profile thereof, and of the land taken and obtained for the use of such road and branches, and file the same in the office of the Secretary of State, and also like

maps of the parts thereof located in the different counties through which the same may pass, and cause the same to be recorded in the office for recording deeds in the county in which said parts of said road and branches shall lie.

SEC. 15. For the purpose of securing the construction of said road and branches, the right of way, and all the lands which may be selected along the lines of said road and branches, within this State, under the grant made by the Government of the United States to the State of Illinois by virtue of "An Act granting the right of way and making a grant of land to the States of Illinois, Mississippi and Alabama, in aid of the construction of a railroad from Chicago to Mobile," passed September twentieth (20), eighteen hundred and fifty (1850); and also the right of way which the State of Illinois has heretofore obtained along and on the line of said railroad and branches, as heretofore located and surveyed, for the uses of the same, as well as the lot of ground obtained by the State within the city of Cairo, for a depot, and all the grading, embankments, excavations, surveys, work, materials, personal property, profiles, plats and papers, constructed, procured, furnished and done by or in behalf of the State of Illinois, for or on account of said road and branches, also the right of way over and through lands owned by the State, are hereby ceded and granted to said corporation, for the only and sole purpose of surveying, locating, constructing, completing, altering, maintaining and operating said road and branches, as in this Act provided, and in the manner following—that is to say: Immediately upon the organization of said company, and the presentation to the Governor of the State of Illinois, of a certificate, signed by the corporators hereinbefore named, and duly acknowledged, accepting of this Act of incorporation, and certifying to the due organization of said corporation, to the subscription to the capital stock thereof by the corporators hereinbefore named, and their associates of the sum of one million of dollars, and the bona fide payment of twenty per cent. thereon to the Treasurer of said Company, verified by the affidavits of the President and Treasurer of said Company (which said certificate shall be filed in the office of the Secretary of State); and after three hundred thousand dollars of registered Canal bonds, or funded internal improvement bonds of the State of Illinois, or two hundred thousand dollars in

specie, or two hundred thousand dollars of six per cent. United States stock shall have been by said corporation deposited with the Treasurer of the State of Illinois, which shall be safely preserved and kept in the Treasury of said State, upon the faith of the same, to be returned to or paid over to said corporation upon the full completion and operation of fifty miles of said Railroad by the said corporation, according to the provisions of their said charter, the said Governor of the State of Illinois, shall, in his official capacity, and in behalf of the State of Illinois, and under the great seal thereof, execute and deliver to the said company a deed, in fee simple, of all said lands granted by the Government of the United States, under the act of Congress aforesaid, said depot lot at Cairo, right of way, grading, embankments, excavations, surveys, work, materials, profiles, plats and papers, hereinafter described and set forth, or in any way appertaining to said road and branches: *Provided*, That said Company shall simultaneously with the execution of said deed by said Governor, execute a deed of trust to the persons and for the purposes hereinafter named and expressed. *And provided further*, That the deed, in fee simple, to be executed by the Governor as aforesaid, shall recite, at full length, the Act of Congress aforesaid, this Act and the deed of trust aforesaid. Said deed of trust shall be executed to Morris Ketchum, John Moore and Samuel D. Lockwood, as Trustees, and shall include and convey to said Trustees and their successors everything included and conveyed in and by said deed, in fee simple, and in addition thereto, the Railroad or Railroads which may be built upon or along said track or tracks, line or lines, and materials for the construction thereof, with all and singular the buildings, shops, engine-houses, turn-outs, stations and real estate of every nature and description belonging, or to belong to, or in anywise appertaining, or to appertain to said road and branches, for the uses, trusts and purposes following, that is to say:

First. To secure and guarantee to the State of Illinois the first and prior lien on everything conveyed by said deed of trust, of every name, character and description, for security, as follows: *Firstly*—The constructing, completing and furnishing said road and branches, in the manner and time, and upon conditions in this Act provided. *Secondly*—For the faithful application of all money or property arising from the sale of lands, or obtained upon the faith of the same, as hereafter

authorized, to the constructing, completing, equipping and furnishing said road and branches, in accordance with the terms of this Act and said Act of Congress. *Thirdly*—The indemnification of the State of Illinois against all and every claim of the United States Government, for proceeds of sale of lands made by said Company, under the provisions of this Act, in the event said roads and branches shall not be completed, as required by the Act of Congress above referred to. *Fourthly*—The lien hereby created shall take and have precedence of all demands, incumbrances, mortgages, bonds, judgments and decrees, against said corporation, or said property, except so far as the absolute power of selling said lands, or any portion thereof, is herein provided for: *Provided*, That in case fifty miles of the said road shall not be constructed, according to the provisions of this Act, within two years from and after the date of the organization of the Company under the same, the bonds or money herein provided to be deposited with the Treasurer of the State of Illinois, shall become forfeited to and become the property of the said State, subject to the disposition of the Legislature thereof.

Second. That on its organization said Company may enter upon, take and receive possession of the said tracks or lines, for the purpose of surveying, locating, working and constructing said road and branches, with the right of way, land, grading, embankments, excavations, surveys, work, materials, property, profiles, plats and papers aforesaid, to be occupied, used and employed for the purposes contemplated by this Act, under whosesoever control the same may be.

Third. That said company shall proceed to locate, survey and lay out, construct and complete said road and branches, through the entire length thereof—the main trunk thereof, or central line, to run from the City of Cairo to the southern termination of the Illinois and Michigan Canal, passing not more than five miles from the northeast corner of township twenty-one north, range two east of the third principal meridian, and no where departing more than seventeen miles from a straight line between said City of Cairo and said southern termination of said Canal, with a branch running from the last-mentioned point, upon the most eligible route, to the City of Galena; thence to a point on the Mississippi River opposite the City of Dubuque, in the State of Iowa; with a branch also diverging from the main track, at a point not north of the

parallel of thirty-nine and a half degrees north latitude, and running on the most eligible route into the City of Chicago, on Lake Michigan. That the central road or main track shall be completed, with at least one line of rails, or single track, with the necessary turn-outs, stations, equipments and furnishings, within four years from the date of the execution of said deed of trust, and the branches within six years from the said date—said roads to be made equal, in all respects, to the road leading from Boston to Albany, usually known as the Great Western Railway, with such improvements as experience shall have shown to be expedient—the central or main line to be first commenced, and be continued to completion.

Fourth. A portion of said lands so conveyed to said trustees, not exceeding one-fourth part thereof in value, to be designated by said Company, shall be held by said Trustees free from all incumbrances for purposes of sale, from time to time, on the requisition of said Company, for the purpose of raising funds for the payment of interest on loans, in case of deficiency from other sources, and for such expenditures as the exigencies of the business of the Company may require: *Provided*, That no portion of said fourth part of said lands shall be sold until said road and branches shall have been surveyed and located, and the work actually commenced on the main road: *Provided further*, That no portion of said lands so held by the said Trustees, free from all incumbrance for said purposes, shall be sold or offered for sale, until the said Trustees shall be satisfied that a sum of money has been actually expended upon the construction of a section of at least fifty miles of said road, adjacent to said lands, equal in amount to the sum of money to be raised from the sale of such portion of said lands, or until a section of at least fifty miles of said road adjacent to said lands, shall have been completed—when the lands on said section will be sold—and so on till the said road and branches shall be complete.

Fifth. For the purpose of raising funds from time to time, for the construction and completion of said road and branches, and the purchase of iron and other materials to be used thereon, said Company may issue its bonds, countersigned by the said Trustees, in sums of not less than five hundred, nor more than one thousand dollars each, at rates of interest not higher than seven per cent. per annum, payable semi-annually; the principal of said bonds payable in the year one thousand

eight hundred and seventy-five, or sooner, at the pleasure of the Company, at such place as it shall designate. The payment of said bonds shall be secured by the deed of trust aforesaid of said lands, roads and materials, as hereinbefore provided; subject, nevertheless, to the prior lien of the State upon said lands and property hereinbefore provided for; which said prior lien shall be referred to and recited in said bonds so to be issued by said Company: *Provided*, That the faith of the State is in no wise pledged for the redemption of said bonds to any extent.

SEC. 16. When the said Company shall have completed and put in running order fifty miles of said road, the said Trustees, on the requisition of said Company, may proceed to sell the lands lying along and adjacent to such section so completed (and not reserved free from all incumbrance as aforesaid), in such manner as the company may direct. Said lands shall be sold for cash in hand, or the bonds of said Company at par. All bonds, received on such sales shall be canceled by said Trustee and delivered to said Company. The Trustee shall invest all moneys received on such sales in the bonds of the Company, which shall be, in like manner, canceled and returned. On canceling said bonds, and before returning them to the Company, said Trustees shall make a brief memorandum on each bond, specifying for or on what particular tract or tracts of land the same was received. On making such sales, and receiving the price of such lands in money or bonds as aforesaid, said Trustees shall convey such tracts, by an absolute title, in *fee simple*, to the purchasers; which conveyance shall operate as a release, or an acquittance, of the particular tract, or tracts, so sold, from all liability or incumbrance on account of said deed of trust and the issue of said bonds, so specified in the preceding section, so as to vest in the purchasers a complete and indefeasible title. Before any sales shall be made of any of said lands, the said Trustees shall make a complete record, describing each and every tract of land selected under said Act of Congress, a copy of which record shall be filed in the office of the Auditor of this State, and as sales of land are made, as provided herein, from time to time, the said Trustees shall make and keep a record as aforesaid of every and each tract of land so sold, together with the name of the person to whom, and the price for which, the same was sold; a copy of which record of sales shall be filed in said Auditor's office semi-annually.

SEC. 17. The Trustees shall not at any time during the construction of said road and branches, sell or dispose of lands to an amount exceeding the sum which shall then have actually been expended upon the said work, but may, at the request of the Company, sell as the work progresses, so as to meet expenditures actually made on the sections of road completed, so far as the receipts from said sales may go towards their liquidation. And all lands remaining unsold at the expiration of ten years after the completion of said road and branches, shall be offered at public sale, annually, until the whole is disposed of, and the avails applied to the payment of the outstanding bonds of the Company as aforesaid; or, if no such bonds be outstanding, said avails shall be paid to said Company.

SEC. 18. In consideration of the grants, privileges and franchises herein conferred upon said Company, for the purposes aforesaid, the said Company shall, on the first Mondays of December and June, in each year, pay into the Treasury of the State of Illinois, five per centum on the gross or total proceeds, receipts or income derived from said road and branches, for the six months then next preceding. The first payment of such percentage on the main trunk of said road to commence four years from the date of said deed of trust, and on the branches six years from the date aforesaid, unless said road and branches are sooner completed, then from the date of completion. And for the purpose of ascertaining the proceeds, receipts, or income aforesaid, an accurate account shall be kept by said Company, a copy whereof shall be furnished to the Governor of the State of Illinois, the truth of which account shall be verified by the affidavits of the Treasurer and Secretary of such Company. And for the purpose of verifying and ascertaining the accuracy of such account, full power is hereby vested in the Governor of the State of Illinois, or any other person by law appointed, to examine the books and papers of said corporation, and to examine, under oath, the officers, agents, and employes of said Company, and other persons. And if any person so examined by the Governor, or other authority, shall knowingly and willfully swear falsely, or if the officers making such affidavits, shall knowingly and willfully swear falsely, every such person shall be subject to the pains and penalties of perjury.

SEC. 19. The selection of lands provided for in the Act of Congress making the grant hereinbefore specified, shall be

made by said Company, or such agents as it may designate, under the appointment of the Governor of this State, subject to the approval in said Act specified. Said selection, as well as the survey, location and completion of said road and branches, and the compensation of such Trustees, shall be at the cost and charge of said Company, without charge of any kind upon the Treasury of the State of Illinois. Said road and branches to be free for the use of the United States, and to be employed by the Post Office Department, as provided in said Act of Congress.

SEC. 20. In case of the death, resignation, removal, or inability to act, of either or all of said Trustees, the vacancy, or vacancies, shall be filled by the Governor of the State of Illinois, and said Company, alternately; the Governor filling the first vacancy that may occur.

SEC. 21. The corporate authorities of any city, or cities on the line of said road or branches, or at either terminus thereof, or any owner, or owners, of property in any such city, or any association of citizens, duly authorized by any such corporation, shall have power to lay down or construct a track, or railroad, along any of the streets of any such cities, for the purpose of conveying property to and from said Railroad which may be consigned to any of the warehousemen in any of said cities; that said track, or Railroad (under the direction of said Company) may intersect the track of said Railroad Company at or near the main depot, in said cities respectively; and said Company shall, at all times, permit the owners, or consignees, of property, in such cities, to take the cars containing the property to them consigned, to their respective warehouses upon said track: *Provided*, That any car so taken, shall be returned without any unnecessary delay; *And provided further*, That whenever it shall be necessary, for the convenience of the public, or persons receiving or sending property by said Railroad, the said Company shall permit side tracks to intersect their main road at any depot on or along the line of said road; and that such persons shall be entitled to have any property taken from such side tracks, under the directions and regulations of said Company, without unreasonable delay; and for the non-performance by said Company of any act of this proviso required to be done, said Company shall forfeit and pay to the party aggrieved the sum of fifty dollars in each case, to be recovered in an action of debt before any Justice of the Peace, or any court having jurisdiction thereof.

SEC. 22. The lands selected under said Act of Congress, and hereby authorized to be conveyed, shall be exempt from all taxation under the laws of this State until sold and conveyed by said corporation or Trustees, and the other stock, property, and effects of said Company shall be in like manner exempt from taxation for the term of six years from the passage of this Act. After the expiration of said six years, the stock, property and assets belonging to said company shall be listed by the President, Secretary or other proper officer, with the Auditor of State, and an annual tax for State purposes shall be assessed by the Auditor upon all the property and assets of every name, kind and description belonging to said corporation. Whenever the taxes levied for State purposes shall exceed three-fourths of one per centum per annum, such excess shall be deducted from the gross proceeds or income herein required to be paid by said corporation to the State, and the said corporation is hereby exempted from all taxation of every kind, except as herein provided for. The revenue arising from said taxation, and the said five per cent. of gross or total proceeds, receipts or income aforesaid, shall be paid into the State Treasury, in money, and applied to the payment of interest-paying State indebtedness, until the extinction thereof: *Provided*, In case the five per cent. provided to be paid into the State Treasury, and the State taxes to be paid by the corporation, do not amount to seven per cent. of the gross or total proceeds, receipts or income, then the said Company shall pay into the State Treasury the difference, so as to make the whole amount paid equal at least to seven per cent. of the gross receipts of said corporation.

SEC. 23. This Act, and all grants herein contained, shall cease and be void, unless accepted by said Company within sixty days after the passage of this Act; and immediately on such acceptance, made in the manner above provided, the deed in fee simple, and the deed of trust aforesaid, shall be made as above provided. All the grants herein contained shall cease and be void, unless said road and branches be surveyed and located, and work on the main trunk actually begun before the first day of January, 1852.

SEC. 24. The State shall have a prior lien upon said road and branches, and all the appurtenances and stock thereof, for all penalties, taxes and dues which may accrue to the State from said corporation, as herein provided; which lien of the

State shall take precedence of all demands, judgments or decrees against said corporation.

SEC. 25. That each and every person, who on the twentieth day of September, one thousand eight hundred and fifty, was the owner of any improvements made previous to that date, on any lot of land conveyed to the said Company, and who became such owner with a view to a residence on, or occupation of, such lot of land for agricultural purposes, shall have the right to purchase, at not exceeding two dollars and fifty cents per acre, a quantity of the lot so owned, to be bounded by the legal subdivisions, not exceeding one-quarter section, to consist of the quarter-quarter, half quarter, or quarter section, which will include the improvement aforesaid: *Provided*, That any person claiming the right to purchase, under the provisions of this Act, shall, within three months from the date of selecting the lands, file in the Clerk's office of the Circuit Court of the county in which the land claimed is situated, a notice to the said Trustees and corporation of his, her, or their claims, describing the land by its numbers, accompanied with an affidavit stating the date and object of the improvement, the time and manner when and how he, she or they became the owner thereof, and also the affidavits of at least two residents of the county, proving the facts in relation to such claim: *And provided further*, That the right of way upon and across any lot of land sold under the provisions of this section, not exceeding two hundred feet in width, shall be reserved and retained for the passage of the road, as the same may be located and constructed, and any person claiming the right to purchase as aforesaid, shall, within twelve months from the date of commencing the work on the road within the county in which the land is situated, pay the said Trustees, or the corporation, the consideration money for the land claimed; which payment shall entitle him, her, or them to a deed conveying an estate in fee; but, in case of failure to make such payment, the right to make the purchase shall cease. When two or more persons claim the right to purchase the same lot of land, and file the proof of ownership as herein required, the person proving the first residence, by himself, or those under whom he claims the improvement, shall have the right to make the purchase, but no sale or conveyance of any lot of land under the provisions of this section, shall affect the rights or equities of parties claiming the same, as between each other.

SEC. 26. In case the persons incorporated by this Act shall fail or neglect to accept the provisions of the same, and comply with its conditions within the time, and in the manner herein prescribed, then the same may be accepted by any other Company which shall be approved of by the Governor, Auditor and Treasurer of this State, who, upon complying with the terms and conditions of this act, shall be vested with all the rights, powers and immunities conferred upon the corporators herein named, and shall be subject to all the liabilities in the said Act set forth, in as full, ample and complete a manner as if their names were inserted as corporators in this Act.

SEC. 27. This Act shall be deemed a public Act, and shall be favorably construed for all purposes therein expressed, and declared, in all Courts and places whatsoever, and shall be in force from and after its passage. (Priv. Laws of Ills., 1851, pp. 61–74.)

147 U.S. 190

Office Supreme Court U. S.
FILED.
NOV 2 1892
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1892.

No. 56.

ILLINOIS CENTRAL RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE CITY OF DECATUR, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF FOR DEFENDANT IN ERROR.

E. S. McDONALD,
Attorney for Defendant in Error.

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STATEMENT.

Counsel for plaintiff in error has in his brief submitted a "statement" which is satisfactory to counsel for defendant in error so far as such "statement" is in accordance with the record; but the "statement" contains suggestions as to the amount of revenue received by the State of Illinois from the railway company "last year" which are not supported by the record, and although such suggestions are not material they are not admitted to be correct.

BRIEF.

I.

AS TO THE JURISDICTION OF THE COURT.

It is submitted with much confidence that the judgment of the supreme court of Illinois in the case at bar is conclusive between the parties thereto; that this Court is without jurisdiction to review such judgment.

For the purpose of the argument it is conceded on behalf of defendant in error as fully as it is claimed by the learned counsel representing plaintiff in error, that the act of the legislature of Illinois granting a charter to the Illinois Central Railroad Company in 1851 created a *contract* between the State and that corporation.

All the supreme court of Illinois has done in the case at bar is to construe the contract so created. The railroad company insisted before that tribunal that the words in the act "*and the said corporation is hereby exempted from all taxation of every kind except as herein provided for*" granted immunity from "special taxation" of its real estate for "local improvements." The contest before that court was limited solely to the proper construction to be given to the exemption clause of the act consisting of the few words above quoted.

The Illinois court has simply decided that a fair construction of the contract does not exempt the real estate of the company from the burden of sustaining its share of the cost of "local improvements" by "special taxation."

In arriving at this conclusion the Illinois court was not called upon to pass and did not pass upon any subsequent

act of the legislature which in any way attempted to change or modify the act of 1851. There is nothing in the constitution of 1870, or in sections 1 and 2 of article IX of the act for the incorporation of cities and villages which in any way attempts to lessen the rights of the railroad company or in anywise refers to such company. These sections are as follows:

SECTION 1. That the corporate authorities of cities and villages are hereby vested with power to make local improvements by special assessment or special taxation or both of contiguous property or general taxation or otherwise as they shall by ordinance prescribe.

SEC. 2. When any such city or village shall by ordinance provide for the making of any local improvement it shall by the same ordinance prescribe whether the same shall be made by special assessment or by special taxation of contiguous property or general taxation or both.

The foregoing sections, it will be observed, are of a general character. No persons or classes of persons or corporations were aimed at; and therefore the Illinois Central Railroad Company was not made the subject of legislation by the provisions of those sections.

A construction of such sections was not required at the hands of the Illinois court. They needed no construction. They are so plain and simple that "he who runs may read them." They construe themselves.

It is true that in the opinion of the supreme court of Illinois, in the case at bar, there is a discussion of "special taxation" and "special assessments" for "local improvements."

Such discussion, however, is incidental to the real question—does the railroad company's charter exempt that corporation from anything else than *general* taxation for *State, County,* and *Municipal* purposes?

The opinion of the State court is part of the record. In it occurs the following language:

"The main objection made by the appellant company is that by the terms of its charter its property is exempt from the special tax thus imposed. By section 22 of the act incorporating the Illinois Central Railroad Company, approved February 10, 1851, it is provided that the said corporation is hereby exempted from all taxation of every kind except as herein provided."

After considerable discussion the opinion concludes in these words:

"*We are therefore of the opinion that appellant's right of way was not exempt by reason of the provision in its charter from the special tax assessed against it.*"

And so the proposition is here again advanced that the only question involved in the case at bar is that of the construction of the act of 1851. And it is insisted that the construction given to that act by the highest court of Illinois binds this Court, and that the writ of error in this cause should be dismissed.

Counsel for plaintiff in error says, on page 27 of his brief: "*The only question here* is whether the tax which has been assessed upon the property of the plaintiff in error *is or not in violation of a valid contract.*" This is a frank admission, and it is submitted that in making it the learned

gentleman has, in effect, said: "The only question here is a question of the construction of the act of 1851, which I claim to be a contract between the State and my client."

In support of the proposition that this Court will not review a judgment of a court of last resort of a State where the question involved is the construction of a contract a few authorities only need be referred to.

N. O. Water Works *vs.* La. Sugar Co., 125 U. S., 18.
St. Paul Railway *vs.* Todd County, 142 U. S., 282.

In the first of the two cases cited, Mr. Justice Gray, in an exhaustive opinion, says:

"In order to come within the provision of the Constitution of the United States which declares that no State shall pass any law impairing the obligation of contracts, not only must the obligation of a contract have been impaired, *but it must have been impaired by a law of the State.* The prohibition is aimed at the *legislative power of the State*, and not at *the decisions of the courts* or the acts of administration or executive officers or the doings of corporations or individuals."

The case of St. Paul, etc., Railway *vs.* Todd County *et al.* was a writ of error to the supreme court of Minnesota.

The legislature of Minnesota, in 1857, granted a railroad company lands to aid in the construction of a railroad. The company was given power, among other things, to acquire, by purchase or otherwise, and to hold, convey, sell, and lease property and estates, either real, personal, or mixed.

The act further declared "that the company should be capable in law of taking and holding any lands granted by the Government of the United States, or of this Territory, or of the future State, *or by other parties*, which shall be conveyed to it by this act, *or by deed of gift or purchase*, or by operation of law, and may mortgage, pledge, sell, and convey the same."

Section 18 of the act provided for the annual payment to the State of three per cent. of the gross earnings of the railroad "*in lieu of all taxes and assessments whatever*," and that in consideration of such annual payments the said company *shall be forever exempt from all assessments and taxes whatever* upon all stock in the said Minnesota and Pacific Railroad Company, whether belonging to said company or to individuals, *and upon all its franchises or estate, real, personal, or mixed*, held by said company; and said land granted by said act of Congress shall be exempt from all taxation till sold and conveyed by said company.

This railway company, under the powers so granted, purchased 35,000 acres of land in Todd county, Minnesota. In 1878 an act was passed providing that all real property in the State subject to taxation should be listed and assessed, &c. In pursuance of such act the 35,000 acres in Todd county were assessed. Payment of the taxes being resisted by the company, litigation ensued and the cause went to the supreme court of Minnesota. That court was called upon to construe the act under which the corporation was organized and by which it was exempted from taxation, as aforesaid.

The exemption clause is about as strong as language could have made it, and yet the court held that the exemption did not extend to the land in Todd county.

On the hearing of the cause in this Court a question of jurisdiction was raised, and it was held that the supreme court of Minnesota had simply given a construction to an act of the legislature which formed a contract between the State and the railroad company, and therefore this Court had no jurisdiction to review the judgment complained of. The writ of error was accordingly dismissed.

The opinion is by the Chief Justice. In it the cause of N. O., etc., Company *vs.* La. Sugar Company is cited and approved.

The Minnesota case is the case at bar, so far as the question of jurisdiction is concerned; and in the case at bar the same result is inevitable—a dismissal of the writ of error.

It is true that in the case at bar the chief justice of the supreme court of Illinois has certified "that there was drawn in question in the cause or proceeding above mentioned the validity of a statute and an authority exercised under said State of Illinois on the ground of their being repugnant to the Constitution of the United States, and that the decision thereon was in favor of their validity."

This certificate has no force or weight in determining whether a Federal question is involved in the face of the record before this Court. Such question is to be determined from an inspection of the record, not from the certificate of the chief justice; otherwise the calendar of this court would be crowded with causes finding places thereon through the accommodating spirit of the judges of the highest State courts. As to the force of such a certificate see Felix *vs.* Scharnweber, 125 U. S., 54.

The opinion of the State court contradicts the certificate. As we have already shown by an excerpt from such opinion,

the question decided was that the exemption clause in the company's charter did *not* include "special taxation" for local improvements, and therefore that the State court had only given a construction to the act of 1851.

II.

AS TO THE EXTENT OF THE EXEMPTION IN THE COMPANY'S CHARTER.

In the event of this Court retaining jurisdiction to review the judgment of the State court, it will become necessary to examine and construe the exemption clause of the railway company's charter.

It is contended on behalf of plaintiff in error that the words of the exemption clause include "special taxation" for "local improvements" as well as *general* taxation for State, county, and municipal purposes. A considerable part of the brief of opposing counsel is taken up in a review of a portion of the early legislation of Illinois on the subject of special assessments for local improvements and of the decision of the supreme court of that State in the *Larned* case.

The charter of the city of Chicago, granted in 1837, is referred to. That charter allowed local improvements to be made by special assessments on property benefited. Five commissioners chosen by the city council made the assessments. An appeal could be taken to the city council, but the action of that body was final and conclusive.

There was a revision of the charter of Chicago on February 14, 1851. The chief change, so far as special assessment was concerned, was in reducing the number of commissioners from *five* to *three*.

In 1863 another revision of the charter of Chicago was had. The change in the matter of local improvements was the substitution of a board of public works for the commissioners and the assessing of the cost of the local improvement substantially on the abutting property by frontage.

The two revisions indicated are referred to by opposing counsel, and then he cites the provision of the constitution of 1848 in relation to municipal taxation as follows:

"The corporate authorities of counties, townships, school districts, cities, towns, and villages may be vested with power to assess and collect taxes for corporate purposes; such taxes to be uniform in respect to persons and property within the jurisdiction of the body imposing the same."

After the citation from the constitution of 1848, above given, the learned counsel, p. 14 of his brief, says:

"Special assessments in proportion to benefits had been sustained by the courts on the theory that they were not taxes, and therefore not within the purview of the provisions of the constitution limiting the exercise of the taxing power."

If any deduction has been made by the learned counsel from his statement in the last preceding paragraph set forth, such deduction has escaped a careful examination by counsel representing defendant in error.

Does opposing counsel mean that as the supreme court of Illinois before 1848 had sustained "*special assessments in proportion to benefits*" on the theory "they were not *taxes*," that *therefore* the constitution of 1848 impliedly recognized

"*special assessments*" as not "*taxation*," although silent on that question? And does he further mean that as the supreme court of Illinois before 1848 had sustained "special assessments" *only* and had not passed upon "special taxation" that the constitution of that year could *not* have contemplated the imposition of "special taxes" for local improvements, and therefore *impliedly* inhibited such taxes?

It is difficult to meet a statement of alleged facts when no application of such alleged facts is made.

As it is not admitted by counsel for plaintiff in error that the railroad property is liable to "special assessments" for local improvements, no reason can be seen for his statement that prior to 1848 the supreme court of Illinois had upheld "special assessments" for local improvements.

Let it be assumed, then, that opposing counsel intended to say: "The supreme court of Illinois *before* 1848 had sustained special assessments in proportion to benefits;" that the utmost the constitution of 1848 could have contemplated outside of the authority given to municipalities "to assess and collect taxes for corporate purposes" was power to make "special assessments in proportion to benefit," and that the legislature in passing the act of 1851 must be presumed to have had in mind such limitation of the constitution of 1848, based on the earlier decisions of the supreme court, and, therefore, while the railway property *may* be liable to "*special assessments in proportion to benefits*, such property is *not* liable to '*special taxation*' for local improvements."

It is submitted that if the learned counsel means anything in that part of his brief from pages 12 to 17, both inclusive, he means just what has been put in his mouth in the immediately preceding paragraph.

If that is the contention on behalf of plaintiff in error is such contention sound?

It will be borne in mind that the proper *construction* of the *exemption clause* of the act of 1851 is the great end in view by counsel, and by this Court, in the event this Court shall entertain jurisdiction of this cause. The construction of that clause requires an inquiry into the *legislative intent* which led to such clause becoming part of the act.

The question then arises, Are the statements on which counsel for plaintiff in error relies to sustain the propositions above imputed to him and on which, presumably, he relies to arrive at the legislative intent correct?

Is it true that *before* 1848 the supreme court of Illinois had sustained "special assessments in proportion to benefits," as alleged by opposing counsel? He cites in support of his statement—

Canal Trustees *vs.* Chicago, 12 Ill, 403.
Peoria *vs.* Kidder, 26 Ill., 351.

The case of Canal Trustees (to which reference will be hereafter again made) was not decided in the circuit court of Cook county, Illinois, until the *May term, A. D.* 1849, and it is the first case in which the question was involved. It is needless, therefore, to add that *neither* of the cases cited could have had any influence in shaping the provisions of the constitution of 1848, relating to municipal taxation already quoted. No distinction between "special assessments" and "special taxation" could have been contemplated by the framers of the constitution of 1848. And therefore the legislature, in 1851, was not influenced by any distinction earlier made by the supreme court, or by the constitution of

1848, between "special taxation" and "special assessments."

It may be safely assumed, then, that there was no intention on the part of the legislature of 1851 to make any distinction in the exemption clause under consideration between the two methods of paying for local improvements.

An examination of the legislation in the State of Illinois on the subject of "local improvements" before and during the session of 1851, more comprehensive than that furnished by opposing counsel, may perhaps aid in arriving at the legislative intent when the exemption clause was engrafted upon the company's charter.

It has already been shown that in 1837 the city of Chicago was granted a charter which authorized "special assessments" for local improvements.

On the 2d day of *March*, 1839, the legislature of Illinois passed an act entitled "An act to incorporate the town of Decatur," the present City of Decatur, the defendant in error. Section 9 of that act is substantially as follows: That upon the application of the resident owners of two-thirds of the real estate on any street or part of a street it shall be lawful for the board of trustees to levy and collect a *special tax* on all the lots on such street or part of street, *according to their respective fronts*, for the purpose of grading or paving the sidewalks on said street or part of a street.

On the 13th of February, 1851, a charter was granted to the city of Peru. The city council was empowered "to levy and collect a special tax on the holders of the lots in any street, lane, avenue, or alley, * * according to their respective *fronts* owned by them, for the purpose of paving and grading the sidewalks, &c."

On February 14, 1851, the city of Chicago was empowered to determine, through commissioners, what persons will be benefited by a local improvement and to assess damages and expenses on the real estate of all persons benefited in proportion to benefits received, &c.

On the 17th of February, 1851, an act was passed "to provide for the building of sidewalks, &c., in the town of Joliet." The act provides that it shall be lawful to levy a tax on property "contiguous or opposite" the improvement by *frontage*, "and on no other property." Laws 1851, p. 263.

On February 17, 1851 (Laws 1851, p. 323), the town of Mount Carmel was authorized to levy a special tax on all property on streets improved by paving, &c., such tax to be according to *frontage*.

It will be noticed that one act in the list above mentioned is the charter of the Town of Decatur, now the defendant in error. The town was empowered to make improvements of streets by special taxation of abutting property. This act was in full force when the act of 1851, under consideration, was passed.

Is it at all probable that the legislature of Illinois in 1851, in granting a charter to plaintiff in error to build a railroad which was to run and did run through Decatur, intended to abridge the powers it had conferred upon that town in 1839? If the contention of plaintiff in error that its property is not liable for improvements such as those contemplated in the charter of Decatur of 1839 is sound, then such charter has, so far as the railroad company's property in Decatur is concerned, been repealed.

If repealed, how? By the passage of the act of 1851; and, as there are no express words of repeal in that act, then *by implication.*

Repeals *by implication* are not favored by courts. A *necessity*, so to speak, for such repeal must be found in an act by or through which it is claimed a repeal of a former act has been accomplished. It is insisted on behalf of defendant in error that there is nothing in the act of 1851 which requires this Court to hold that the powers of Decatur have been lessened by that act.

The acts passed during the session of 1851 conferring powers on municipal corporations to pay for local improvements by special taxation by frontage are pressed upon the attention of this Court as indicative, among other things, of the construction placed by the legislature of Illinois upon the constitution of 1848. It is evident that no doubt existed in the minds of the members of the legislature during such session that they had full authority under the then constitution to empower cities and towns to pay for local improvements by special taxation "according to frontage." The passage of the acts giving such authority was a legislative construction of the constitution of 1848.

It is needless to urge that legislative construction of laws and constitutions is entitled to consideration.

The deduction to be drawn from the construction so placed by the legislature upon its own powers before and during the session of 1851 is that that body did not intend by the exemption clause in question to free plaintiff in error from the obligation imposed upon other property owners of submitting to "special taxation" for public improvements. It is altogether improbable that a legislature so liberal in the distribution to cities, towns, and villages of the power to make improvements by "special taxation" should have intended that a land owner whose real estate was likely to

be found within the limits of a hundred municipal corporations should escape contribution to such improvements as would enhance the value of such real estate.

In the case at bar the supreme court of Illinois has held that the exemption clause does not include "special taxation" for local improvements. A review of the authorities construing words exempting corporations from taxation will show that courts other than the supreme court of Illinois have held substantially as has the latter court in this cause.

"A railroad company paid the State a *specific* tax under a law which provided that it should not 'be assessed with any tax on its lands, buildings, or equipments.' *Held*, not to include *municipal taxation*."

Orange & O. R. R. Co. *vs.* Alexandria, 17 Gratt., 176.

One of the best considered cases on this subject comes from one of the youngest of the States—South Dakota. The opinion is one of great force and clearness of argument and expression. We cite from its syllabus as follows:

"1. Where a provision was made in a grant to a railroad company by the former Territory of Minnesota, while the Territory of Dakota was a part thereof, exempting its property from 'all taxation,' *held*, that the real estate of said company was not thereby exempted from an assessment for local municipal improvements; that such an assessment was not *taxation* within the meaning of the grant.

"2. The organic act of the late Territory of Dakota provides that 'all property subject to taxation shall be taxed in proportion to its value.' *Held*, that this limitation has no application to assessments for local municipal improvements, but only relates to general territorial, county, and

municipal taxes levied to defray the ordinary expenses of the government.

"3. An assessment for improving an avenue in the city of Watertown was apportioned on the property of plaintiff, as well as all other property abutting on said avenue along the line of the same, *at a fixed sum per front foot. Held*, that such an apportionment is not repugnant to nor in conflict with the organic act of the late Territory of Dakota, and was a proper exercise of the power of the city under its charter, and therefore legal and valid."

Winona and St. P. R. R. Co. *vs.* City of Watertown, 44 N. W. Rep., 1072.

In a Maryland case language as broad and general as the language of the exemption clause in the case at bar was construed.

That language was, that land appropriated as a cemetery shall "not be liable to any tax or public imposition whatever."

The property was assessed for opening a street. The court say: "We think the legislature intended nothing more than to exempt the property of the proprietors from all taxes or impositions levied or imposed *for the purpose of revenue*, and not to relieve it from such charges *as are inseparably incident to location.*"

Mayor, etc. *vs.* Proprietors, 7 Md., 517.

The city of Newark, New Jersey, levied a special assessment for improving a street on property of a railroad company. Payment was resisted by the company on the ground of alleged exemption under its charter. The charter pro-

vided that the company "shall pay a tax of one-half of one per cent. on its capital stock, *and that no other or further tax or imposition shall be levied upon the company.*"

The assessment was held not to be a *tax* within the provisions of the company's charter, and that therefore it was not exempt.

State *vs.* Newark, 27 N. J. Law, 187.

In Illinois, in the case of Trustees *vs.* City of Chicago, 12 Ill., 406, which case has since been adhered to by the supreme court of the State, it was held that the words in an exemption clause of a statute, "that the lands and lots shall be exempt from *taxation of every description* by and under the laws of this State, until after the same shall have been sold and conveyed by the trustees," did *not* exempt from special assessments; that assessments were not "taxation" within the meaning of the exemption clause.

"A statute laid a tax on railroads and declared it to be 'in lieu of all other taxes.' *Held* not to exempt them from *taxation for laying out a highway.*"

Bridgeport *vs.* N. Y. & N. H. R. R. Co., 36 Conn., 255; Am. Rep., 63.

"The Foster Home Society, by its charter, was exempt from 'taxes and assessments.' *Held* that this did not include *local assessments* for *municipal* purposes."

State Protestant Foster Home Society *vs.* The Mayor, etc., 35 N. J., 157.

"Where an act exempted a society from 'all taxes, charges, and impositions' it was held not to include a *tax* for improving the streets."

The City of Patterson *vs.* The Society of E. U. M., 4 Zabr., 385.

"A statute providing that houses for schools, etc., should be exempt from taxation *held* not to relieve them from *taxation for streets.*"

In the Matter of College Street, 8 R. I., 476.

"Where a cemetery company was exempted from the payment 'of *any tax or public imposition whatever*' it was held that a *paving tax* was not embraced in the exemption."

Mayor of Baltimore *vs.* Green Mount Cemetery, 7 Md., 517.

In the Westchester insurance case, 91 N. Y. Rep., 574, it was held that the words of a statute of New York, under which exemption from *all* taxation was claimed, did not extend to exemption from *municipal*, but only *State*, taxation.

There are many other cases which construe exemption clauses in acts of legislatures. A few only will be cited:

Ky. Cent. R. R. Co. *vs.* Pendleton Co., 2 N. W. Rep., 176.

Blucke *vs.* Ballou, 3 Wend., 263.

State *vs.* City of Elizabeth, 37 N. J., 330.

Buffalo City Cemetery *vs.* City of Buffalo, 46 N. Y., 506.

Roosevelt Hospital *vs.* Mayor, 84 N. Y., 108.

Hassan *vs.* The City of Rochester, 67 N. Y. (court of appeals), 528.

Opposing counsel cite with much approbation McGee *vs.* Mathis, 4 Wall., 143. A construction was given in that case to an exemption clause in an act of the legislature of Arkansas which provided that "all said swamp and overflowed lands shall be exempt from taxation for the term of ten years or until they shall be reclaimed."

The act provides for the issue of transferable scrip receivable for any lands not already taken up at the time of the selection by the holder, for contracts for the making of levees and drains, and for the payment of contractors in scrip or otherwise.

The exemption from taxation was declared by the act to be "for the encouraging" by all just means the progress and completing of the reclaiming of such lands by offering inducements to purchasers and contractors to take up said lands.

Afterwards the exemption section of the act was repealed and provision made by law for the taxation of swamp and overflowed lands *sold* or to be sold precisely as other lands.

A party before the repeal had become owner by transfer from contractors of a large amount of the scrip issued under the act containing the exemption clause, and with such scrip after the repeal took up and paid for many sections of the granted lands in Chicot county.

Afterwards, in 1857, another act of the legislature local in its nature provided for the making of levees and drains in Chicot county and authorized a special tax to meet the cost. This tax was assessed upon the unreclaimed swamp lands of the person who had taken it up with scrip, as stated. Payment was resisted and the cause reached the Supreme Court of the United States.

This Court held that the levee tax was a violation of the exemption clause in the granting act, and therefore not valid. In the opinion it is said :

"It was strenuously urged for the defendant that the exemption contemplated by the statute was exemption from general taxation and not from special taxation for local improvements benefiting the land, such as the making of the levees, and many authorities were cited in support of this view. The argument would have great force if the provision for exemption had been contained in a general tax law or *in a law in framing which the legislature might reasonably be supposed to have in view general taxation only.* But the provision under consideration is found in a law providing for the construction of levees and drains, and devoting to that object funds supposed to be more than adequate, derived from the very land exempted, and the exemption is for ten years, or until reclaimed, and is offered as an inducement to take up the lands, and thus furnish those funds. It is impossible to say that this exemption was not from taxation for the purpose of making these levees and drains as well as from taxation in general."

It will be seen that the court laid much stress upon the fact that the exemption was not in "a general tax law" or in a law in framing which the legislature *might reasonably be supposed to have in view general taxation only.*

The exemption was found in an act which provided for the reclaiming of swamp lands, for the sale of such lands, for the appropriation of the proceeds of such sale to such reclamation; and it was eminently just that this court should hold that the exemption applied to such lands.

The lands were sold on the declaration of the legislature that they should be non-taxable until reclaimed; and it was contemplated by the act that the price obtained by the State should be applied to such reclamation and would be adequate for such purpose. It would have been inequitable to have compelled purchasers under such a law to pay the assessments sought to be imposed. To have enforced such assessments would have been, in effect, to have compelled purchasers *to pay twice for the same lands.*

There is no real analogy between the facts in the McGee case and the facts in the case at bar.

In the charter of the plaintiff in error there is no mention of any system of reclaiming lands, nor any mention of any other system of improvement. The charter deals with *general* taxation alone. The legislature is seeking to protect the *State* revenues.

Mark the language in section 22:

"After the expiration of six years the stock, property, and assets belonging to said company shall be listed by the president, secretary, or other officers with the *auditor of State,* and an annual tax for *State* purposes shall be assessed by the auditor upon all the property and assets of every name, kind, and description belonging to the said corporation. Whenever the taxes for *State* purposes shall exceed three-fourths of one per cent. per annum such excess shall be deducted from the gross proceeds as income herein required to be paid by said corporation to the *State;* and the said corporation is hereby exempted from all taxation of every kind, except as herein provided for."

It will be seen from the foregoing from section 22 that

State taxation was the subject-matter of the State's solicitude. Such taxation was being hedged about with safeguards.

The charter of plaintiff in error, within the meaning of the language of this Court in the McGee case, is a law "in framing which the legislature might reasonably be supposed to have in view *general taxation* only," and it is fair to assume that had the law of Arkansas been like the one under consideration a different decision would have been arrived at in the McGee case.

Recurring again to section 22, no reference is made to any other kind of *taxation* than *State* taxation or to any kind of *assessment*. It has been already shown by reference to acts of the legislature of Illinois passed before 1851 and during the session of that year that such legislature recognized in the fullest sense that "special taxation" and "special assessments" could be lawfully imposed and many times granted authority for the imposition thereof. This should be borne continually in mind.

It is fair, therefore, to argue that the legislature, in view of the particular taxation that had been in the preceding portion of section 22 provided for, had no intention by the words "and the said corporation is hereby exempted from all taxation of every kind except as herein provided for" to include anything but *State* taxation. An examination of that portion of section 22 which precedes the exemption clause will disclose that after six years "the stock, property, and assets belonging to the company" were to be listed for *State* taxation with the *auditor of State*; that whenever the taxes levied for *State* purposes should exceed three-fourths of one per centum per annum such excess should be deducted from the gross proceeds or income required to be

paid by the corporation to the State. Afterwards, in the same section, it is provided that the taxes to be paid by the company shall be *at least* seven per cent. of the gross earnings of the corporation.

It seems proper that the words of the exemption clause, "and the said corporation is hereby exempted from all taxation of every kind, except as herein provided for," should be held to mean an exemption from all *State* taxation save as in said section 22 provided for—that is, *from every other kind of State taxation.* Section 22 is in parts very obscure. A variety of *State* taxation is specified, more or less clearly. It was the evident intention that as there was for a time a sliding scale of taxation, with a limit of seven per cent. of gross earnings, that there should be an exemption from *State* taxation, except as in the section specified. In other words, the parties to the contract were stipulating that the *State* taxation should never be greater than the provision made in that behalf in section 22.

There is a rule of construction which supports the position taken, that the words of the exemption clause are referable to *State* taxation.

"If general words follow an enumeration of particular cases, such general words are held to apply only to cases of the same kind as those which are expressly mentioned."

Shirk *vs.* The People, 121 Ills., 65.
In re Swigert, 119 Ills., 83.
Potter's Dwarris, 247, 248.

Under this rule the words of the exemption clause should be held to apply only to *State* taxation, as such taxation

alone in the other parts of the section is under consideration.

It is not forgotten, while asserting the proposition in the last preceding paragraph contained, that the supreme court of Illinois has decided that the exemption clause includes general municipal taxation. The highest courts in other States have held that language in acts substantially like that in the case at bar did *not* exempt from the payment of general municipal taxes. As the supreme court of Illinois has been so liberal as to make the construction referred to, such liberality should not be used to exempt plaintiff in error from payment of special taxes which improve its property.

Attention is called to a mistake made by opposing counsel on page 11 of his brief. He says:

"It has never been settled in Illinois that special assessments can be levied upon the property of the plaintiff in error for local improvements. That question, as counsel is advised, has never been before the supreme court of that State; nor does it seem necessary to the decision of this case for the court now to pass upon it. We do not propose, therefore, to discuss the proposition. We simply say it is a controverted question, which will be in order to consider when a case arises necessarily involving it."

The learned gentleman has evidently forgotten the case of I. C. R. R. Co. *vs.* Commissioners of Drainage, 129 Ills., 417, in which, against the arguments of counsel for plaintiff in error in favor of its exemption, the court held that the "right of way" of the company was subject to special assess-

ments for the construction of a drain. It is true the learned gentleman says it does not matter whether or not that question has been decided. It is as well, however, to be correct in statements made by counsel on each side while the argument progresses. And it is not admitted by this side that it is important whether or not the supreme court of Illinois has held that the property of plaintiff in error is liable to special assessments.

III.

AS TO "SPECIAL TAXATION" FOR "LOCAL IMPROVEMENTS."

It is contended by opposing counsel that there is a wide difference between "special taxation" and "special assessments," and therefore the former is within the meaning of the language of the exemption, and should not be enforced against the railway property.

It will be noticed that the learned counsel does not cite an authority in support of his contention that "special taxation" for "local improvements" is substantially different from "special assessments" for a like purpose, aside from the earlier decisions of the supreme court of Illinois. That court, in the case at bar, reviews the earlier Illinois decisions on the subject, and the conclusion of the court is that "in special 'taxation,' as well as in special assessments, the property charged is supposed to receive such benefits from the improvements as will be an equivalent for the amount of the special tax."

There is a difference in the application of the two methods to charge property with benefits received from local improvements, but in substance the results of the two methods

are the same. In practice the charge upon property is about equal under each system.

In Illinois Central Railroad Co. *vs.* City of Mattoon, decided March 26, 1892, not yet published in State reports, but found in 30 Northeastern Reporter, p. 773, the supreme court of Illinois, on facts substantially like those in the case at bar, reaffirmed the conclusions arrived at in this case—that is, again held that "special taxation" for "local improvements" was not within the exemption clause of the charter of plaintiff in error, and also held that "special taxation" and special assessments are substantially alike.

In the case of Hasson *vs.* The City of Rochester, 67 N. Y., 528 (court of appeals), it was held that State property was liable to special taxation for a local improvement.

The per front foot assessment against abutting property to pay its proportion of the expense of street paving is *not a tax* within the meaning of a statute limiting a borough's right to lay taxes to a certain per cent. of the assessed valuation of the property, nor is it within the meaning of the constitution requiring uniformity in taxation.

Greenburg *vs.* Laird, 8 Pa. Ct. R., 608.

The fact that the lots fronting on a street differ somewhat in depth and value does not of itself render void for inequality assessments against them according to frontage for improvement of a street.

Baumont *vs.* City of Wilkesbarre (Pa.), 21 Atlantic Reporter, 888.

"In many instances where streets were to be opened or improved, sewers constructed, water pipes laid or other im-

provements entered upon, the benefits of which might be expected to diffuse themselves along the line of the improvement in a degree bearing some proportion to the frontage, the legislature has deemed it right and proper to take the line of frontage as the most practicable and reasonable measure of probable benefits, and making that the standard to apportion the benefits accordingly. Such a measure of apportionment seems at first blush to be perfectly arbitrary and likely to operate in some cases with great injustice; but it cannot be denied that in the case of some improvements frontage is a very reasonable measure of benefits; much more just than value could be, and perhaps approaching equality as nearly as any estimate of benefits made by the judgment of men. However this may be, the authorities are well united in the conclusion that frontage may lawfully be made the basis of appointment.

Occasional hardships must inevitably result from the adoption of such a basis, but the question is fairly a debatable one whether they are likely to be more serious or more frequent than those which are to be anticipated from the selection of some other rule; and this question must be deemed settled by the statute."

Cooley on Taxation, pages 451, 452.

"It has been shown in another place that while these local assessments are laid under a taxing power, they are not taxes in the ordinary understanding of that term, and that consequently the usual exemptions from taxation will not preclude the property exempted being subjected to them."

Cooley on Taxation, page 456.

IV.

IS A RAILROAD RIGHT OF WAY SUBJECT TO ASSESSMENTS FOR STREET IMPROVEMENTS.

It is insisted by counsel for plaintiff in error that such railroad property is not subject to assessment for the paving of a street which crosses it. He cites several authorities alleged to be in support of that position.

The two Pennsylvania cases cited hold that "right of way" cannot be charged with any part of the expenses of paving a street, because, *in the opinion of the court*, such kind of railroad property cannot be benefited by such an improvement. The court constitutes itself the judge of what will or will not benefit such property.

In the case of New Jersey R. R. Co. *vs.* City of Elizabeth, 37 N. J. Law, 332, it was held that an assessment could not be sustained. One of the reasons assigned for such conclusion was that "the *proof*" showed "that the paving laid at the crossing of the street over the railroad track is an injury rather than a benefit to the company and occasions increased expenses in keeping the track in repair." Another reason was that the company's charter exempted it from such assessments.

The city of Elizabeth case, *supra*, has since been overruled by N. J. R. R. Co. *vs.* Mayor and Aldermen of Jersey City, 42 N. J. Law, 97. In the latter case it was held that the "road-bed" and terminals were subject to taxation for the improvement of a street. It is true in this case the street did not cross the "road-bed," but was one-fourth of a mile distant from it. If the "road-bed" may be assessed for a street one-fourth of a mile distant there would seem to be

no good reason why an assessment should not be sustained for improving a street which crosses such "road-bed."

That "right of way" may be lawfully assessed for improvements of streets crossing it has been held in—

Northern Indiana R. R. Co. *vs.* Connolly, 10 Ohio Stat., 164.

In the case last cited there is a full discussion of the subject of such assessments, and among other things the court says: "If railroad tracks are taxable for *general* purposes, it is difficult to perceive why they should not be subject, also, to '*special taxes*' or assessments. * * * For these reasons we are satisfied that the lands appropriated for and occupied *by the railroad track at its intersection with Broadway* were liable to the assessments imposed by the city of Toledo."

There is more good, hard, common sense in the above extract than in all the adverse decisions referred to in brief of plaintiff in error. The supreme court of Ohio in two other cases has held the same way, but at this writing the references are not at hand.

An assessment for a sidewalk imposed upon depot grounds of a railroad was upheld in—

The B. & M. R. R. Co. *vs.* Spearman, and the City of Mount Pleasant, 12 Iowa, 117.

An assessment for a local public improvement made upon "a strip of ground 20 feet wide extending from Charles street to Massachusetts avenue and owned and used by the defendant, The Peru and Indianapolis Railroad Company, *as and for its railroad track*," was sustained in—

The Peru and Indianapolis R. R. Co. *vs.* Hanna *et al.*, 68 Indiana, 562.

In the above case the court says:

"The first point made by appellant's counsel is that the strip of ground in controversy is not assessable for street improvements, because *the railroad track is itself a public highway.* We cannot concur in this view, but we are of opinion that *the track* of a railroad company, when it borders on a street, is properly assessable for its due proportion of the cost of the improvement of such street under an ordinance of the city."

An assessment upon a street railway for the *widening* of Kearney street, San Francisco, was sustained in—

Appeal of N. B. & M. R. R. Co., 32 Cal., 504.

State property, in the face of an act exempting "*all lands* belonging to the State or the United States" from taxation, was held liable to assessment for local improvements in—

Hassan *vs.* City of Rochester, 67 N. Y. Rep., 528.

Why should the property of a railroad company be held more sacred than the property of the State?

An assessment by frontage for improving an avenue in the city of Watertown, Dakota, made upon railroad property abutting on such avenue, was sustained by supreme court of Dakota in—

Winona and St. Paul R. R. Co. *vs.* City of Watertown, 44 N. W. Rep., 1072.

It was held in I. C. R. R. Co. *vs.* Commissioners of Drainage, 129 Ill., 417, that "the track and right of way" of that company were properly assessable for benefits thereto by a drain constructed under a law of the State by drainage commissioners. It was insisted in that case by counsel represent-

ing plaintiff in error that the imposition of such a burden on the right of way was in violation of the constitution of the State and that the assessment was void. The court held the assessment legal.

It would seem that if "the right of way" may be assessed for drainage purposes no good reason can be shown why such "right of way" should not be chargeable with its fair proportion of the cost of improving a street, and especially a street crossing such "right of way."

It is of the greatest importance to railway companies to have streets at the intersection thereof with railway tracks put into and maintained in the best possible condition. Railway crossings at grades in cities are veritable shambles. The slaughter at such points is startling. After death, so far as the railways are concerned, comes the judgment. Innumerable suits flow from "accidents" at "crossings." The better the condition of the "crossing" the less the liability to injury to persons passing over the same in vehicles.

Who shall say that railway property is not benefited by the conversion of a "mud road" at a street crossing into a well-paved street? The railroad is improved in its marketable value by the construction of such paved thoroughfares. Of course, a railroad is not sold and passed from hand to hand like ordinary real estate. The owners of a railroad are the stockholders of the company. They sell their interest in the railroad property by sales of their shares of stock. The price of the stock depends upon the condition and value of the property which such stock represents.

The plaintiff in error should be willing to contribute a share of the cost of such improvements as enhance the value of its property.